Justice of the Peace
and
LOCAL GOVERNMENT REVIEW
ESTABLISHED 1837
[Registered at the General Post Office as a Newspaper]
LONDON:
SATURDAY, AUGUST 16, 1958
Vol. CXXII No. 33 PAGES 525–544
Offices: LITTLE LONDON, CHICHESTER, SUSSEX
Chichester 3637 (Private Branch Exchange).
Showroom and Advertising:
11 & 12 Bell Yard, Temple Bar, W.C.2.
Holborn 6900.
Price 2*s.* 9*d.* (including Reports), 1*s.* 9*d.* (without Reports).

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NOTES OF THE WEEK

Submission of "No Case"

We are indebted to a correspondent for sending us a copy of the judgment in the unreported case of *R.* v. *Justices for the County of Devonshire* sitting at Cullompton, *ex parte West Somerset Co-Operative Society Ltd.* It was heard in the Divisional Court on April 23, 1958, and was an application for *certiorari.*

The facts as given by the Lord Chief Justice in his judgment were that at the close of the prosecution's case the defendant's advocate submitted that there was no case to answer and he did not indicate in any way that he was disputing the facts of the case. He made his submission without any indication that he desired, if the justices were against him, to call evidence. At the conclusion of his submission he was asked by the chairman if he wished to say any more and he replied "No." The justices ruled against his submission and convicted and imposed a fine. Thereupon the advocate said "You have convicted without hearing me," because, he said, he wanted to call evidence. His opponent said "Call your evidence."

The Lord Chief Justice said that it was absurd to say because the justices, in the belief that the only point being submitted was a point of law and they had ruled against that point that they would not have heard any facts placed before them. His Lordship continued "That is the sort of point which has been brought before this Court on more than one occasion where it is said that it is the only point the defendants have got and when the justices offer to continue to hear the case the party refuses to call his evidence and says 'You have decided against me.'"

Lord Goddard made it clear that when there is a misunderstanding of this sort it is not right for the advocate whose submission has failed, to refuse to go on with his case and then to seek to get the High Court to grant *certiorari.* He said that in this case the justices would have heard anything on the merits which the defendant had to put before them and he added "It is a curious state of affairs that the West Somerset Co-Operative Society, if they had any merits should not have put the merits before the justices and given any explanation or tendered evidence to show that they were not responsible for this milk being contaminated; and of course they could never have cleared their name, so to speak, by coming here for *certiorari* because we should have granted it on the technical ground and not on the merits at all."

The application failed and was dismissed with costs. We think that our readers will be interested to know the view taken by the High Court in this case as it is a matter of concern both to justices and to advocates appearing before them.

Perjury Not a Civil Wrong

If, by giving false evidence in criminal proceedings a man causes another to be convicted and sentenced to imprisonment this would no doubt be considered by most laymen as a ground upon which the perjurer should be liable to pay damages to the man whom he has wronged.

That is not at all unreasonable, but there are considerations to which the law has to have regard, the effect of which is that perjury cannot be made a ground for a civil action. The point was decided, on the basis of earlier authority, by the Lord Chief Justice in a case reported in *The Times* of July 24. This was upon a preliminary point in an action by a Parkhurst prisoner against the defendant, who he alleged, had given false evidence against him at his trial.

It was admitted that there was no precedent for the recovery of damages in such circumstances but counsel argued that an action would lie. In delivering judgment the Lord Chief Justice referred to *Watson* v. *McEwan* [1905] A.C. 480, in which Lord Halsbury said "it is settled law and cannot be doubted the remedy against a witness who has given evidence which is false and injurious to another is to indict him for perjury; but for very obvious reasons, the conduct of legal procedure by courts of justice, with the necessity of compelling witnesses to attend, in-

volves as one of the necessities of the administration of justice the immunity of witnesses from actions being brought against them in respect of evidence they have given."

That supplies the answer to the not unnatural suggestion that perjury should be a civil wrong for which damages could be recovered. The administration of justice would be so seriously hampered that the interests of the individual must stand aside. It might be that in certain circumstances compensation out of public funds would be paid to a person who had suffered imprisonment as the consequence of false evidence.

During the argument, Lord Goddard commented on the fact that down to the late sixteenth century perjury was not an offence, and that the Star Chamber took it upon themselves to punish perjury; this was one of the few good things that the Star Chamber did. After that perjury became punishable at law.

"Men of Straw"

Counsel having cited an old case in which an action was brought concerning bailors, the Lord Chief Justice remarked: "I suppose they were men of straw. These men used to stand about outside the Judges' chambers and they had a straw in their mouths, and that was the origin of the expression "men of straw," and from his quite unusual knowledge of the works of Charles Dickens he proceeded to quote Mr. Perker and Mr. Pickwick on the subject.

Like many expressions in common use, "men of straw" is ascribed by various authorities to different origins. Lord Goddard's explanation sounds like the right one, but *Brewer's Dictionary of Phrase and Fable*, to quote only one other authority, defines a "man of straw" as follows: "A man without means, with no more substance than a straw doll; also, an imaginary or fictitious person put forward for some reason." That, however, is only a definition, and there is no reason to doubt that the origin is as stated by the Lord Chief Justice.

"Driving Under the Influence"

The above phrase, which appears on the cover of the May, 1958, issue of the *Justice of the Peace* published in Victoria, Australia, shows that the problem of the drunken driver is not confined to this country. There are two articles in that issue which deal with the question; one is concerned with the court aspect of the problem and the other with the medical aspect of the percentage of alcohol in the blood.

In the former article the relevant sections of the Crimes Act, 1957, are referred to and it appears that to drive a motor car while under the influence of intoxicating liquor or of any drug to such an extent as to be incapable of having proper control of the car is a misdemeanour which can be dealt with summarily. In the case of a first offence the maximum penalty is a fine of £30 or six months' imprisonment and in the case of a second or subsequent offence it is imprisonment for 12 months. If the offender holds a licence under the Motor Car Act, 1951, the court *must* cancel that licence and *must*, in any event, disqualify the offender from obtaining any such licence except upon the order of a court of petty sessions consisting of a stipendiary magistrate sitting alone. There are other relevant provisions, and the result is that an offender will be without a licence for at least one year from the date of his conviction.

A person charged with such an offence may decline to have it heard summarily and, in any event, a court of petty sessions may decide that the case is one more suitable for trial as an indictable offence. This seems to be akin to our procedure under ss. 25 and 18 of the Magistrates' Courts Act, 1952.

The article dealing with the medical aspect of the problem gives figures showing the percentage of alcohol found in the blood of patients admitted to hospital after being involved in road accidents which suggest that the proportion of accidents in which drink is a factor is quite high. It is stated that, according to international figures, Melbourne leads the world's cities in the accident death rate proportional to population. The peak accident times also support the view that drink is a cogent factor. Amongst the conclusions to which the writer comes are that the offence of "driving under the influence" is one which it is difficult to prove, that medical evidence of a blood alcohol test is not conclusive because of the observed variation in the behaviour of different individuals and that there should be power to require that a blood test be taken.

Another short article sets out regulations which have been made as to the manner in which blood samples for analysis are to be taken. They are designed particularly to ensure that nothing which is done in the taking of the sample shall in any way affect the result of the analysis, and they provide for one half of the sample taken being handed to the person from whom it was taken so that he may have it analysed if he so desires.

Irish Offenders and Their Return to Ireland

In our note at p. 442, *ante*, we expressed the opinion that a probation order containing a requirement that the probationer should return to Ireland, his own country, and remain there would be inappropriate because supervision would not be practicable.

The question of returning Irish offenders to their own country came before the Court of Criminal Appeal upon the reference to it by the Home Secretary of the case of *R.* v. *McCartan* (*The Times*, July 31).

For the guidance of courts in the future, the judgment was given in public. The Lord Chief Justice referred in particular to cases of young men who if they had been citizens of this country would have been sent to borstal. In the case of McCartan the Judge made a probation order with a requirement that the probationer should return to Ireland and stay there. He came back however, and in respect of a breach of the order he was sent by a Court of Assize to prison for 12 months. Lord Goddard said that in the opinion of the Court such a probation order could not be made. It was not in the power of a court in this country to make it a term of the probation order that the probationer should go to Ireland and remain there because he could not be under the supervision of a probation officer nor was there a petty sessional division in this country which could deal with him if he broke the probation order.

The Lord Chief Justice added that if the court has before it one of these young men who the court thinks should be made to go back to Ireland instead of remaining in this country and that this country should not be put to the expense of keeping him at borstal the way to do it is to bind him over and make it a condition of the recognizance that he returns to Ireland and does not return to this country for such period as the court may think fit.

The power to include such conditions in a "common law" recognizance can certainly be exercised by courts of Assize and quarter sessions, but we

know of no authority under which magistrates' courts can be said to possess such a power. Unless and until it is authoritatively decided that they can exercise such a power it would, we think, be better for magistrates' courts to abstain from doing so. The Court of Criminal Appeal was dealing with a case that arose at Assizes and its judgment had special reference to borstal cases which are almost always dealt with at Assizes or quarter sessions. The position of magistrates' courts does not appear to have been brought to the notice of the court.

On Moving Offices

We remarked at p. 242, *ante*, that a statement of policy on behalf of the Minister of Housing and Local Government had lost nothing of forthrightness through its being given to the world through the mouth of the Secretary of the Ministry. The conference in July of the Town and Country Planning Association provided an occasion for a similarly forceful pronouncement: the conference was concerned amongst other things with problems of the daily flow of workers into and out of London. As Dame Evelyn Sharp remarked: "The dispersal of offices from London is now one of the most important and urgent planning problems we have and it confronts not only the planning authorities but the employers concerned as well. For this is not only a matter of planning and economics; it is also a matter of intimate personal interest to everyone who strap-hangs in tube or train, or who queues for a bus, or who sits for hours in a London traffic jam." She went on to say that thousands of people were spending many hours a week in intolerable conditions, with ill effect on the efficiency of the staff; she regarded this as one reason for difficulty in recruiting staff, and went so far as to say that it was "mad" to concentrate so many office staffs in London. While the Government already had some 38,000 members of its headquarters office staff working outside London, too few other large employers had been willing to make the effort. Industry, on the other hand, had done much in this direction. The change had begun, reluctantly and under pressure, when it was made compulsory to obtain industrial development certificates for new factory buildings, but industrial employers had been satisfied with the results. Whatever the initial difficulties, they had found recruitment easier, and now had a generally happy and less tired staff.

"The problem now (she said) is office employment. This is the root cause of congestion in London today, and of the daily march into the capital of an army of 1½ million workers." We must (she said) "persuade the employers of some of this army to take at least a part of their offices outside London." She recognized that London is the great commercial centre of the country, and indeed one of the great commercial centres of the world. For this reason many firms and institutions must have their headquarters in London, though this might not be true of all who do so. In any case it does not mean that repetitive work could not be put outside London. Although it may be inconvenient to split headquarters staff from the branches, this can be done; the inconvenience can be exaggerated, and certainly is not so serious as the intolerable inconvenience associated with the great daily inflow into London.

She went on to speak of the areas outside London some of which offer opportunities for employers of office staffs. In the New Towns, you have a large young population and first-class schools. Over the next few years any employer of office staffs who sets up in a New Town can have his pick, on his door-step, of the crop of grammar school leavers. The New Town Corporations are as keen to welcome office employers and to help them with their building and with their housing problems as these employers ought to be to give their workers better living conditions. There are also the small towns which are being expanded to take work and building from London, and there are other residential areas with an adolescent population looking for a "white collar" livelihood.

The arguments thus stated by Dame Evelyn are impressive, but the arguments are not all one way. It is well enough for planning authorities to restrict the number of new office buildings, whether these are designed to be let in separate suites or to be occupied as a whole by some big undertaking. It may be practicable to force a company which proposes an entirely new office to be content with a small one for its directors and their personal staff, and to send the routine work to some place on the further side of the Green Belt. *The Times* of August 2 published an attractive picture of an insurance company's new offices amid woods and fields at Dorking. It is quite possible that firms which have outgrown their old accommodation have in recent years concentrated their staffs in large new London buildings, not only for efficiency, but for reasons of prestige.

Dame Evelyn Sharp remarked that the problem was not one merely of finance and economics, but also one of human values. Even the human values, however, are not all on one side. Office staffs do not consist entirely of juveniles. A firm which has been established in central London since before the war will usually have many employees who have reached or are verging upon middle age. These will have made their homes at places all round London; they will often have children going to local schools, and a large proportion will be buying their own houses. Moreover, male office workers are, to a much greater extent than factory workers, committed in their own minds to the company or enterprise they serve. Often at the present day there is a pension scheme; even apart from this the office worker normally begins at a smaller wage than the factory worker, and looks forward to a process of regular advancement, which can be foretold and has a bearing on his scale of living.

It is therefore much more serious for him to leave his firm than for the average factory worker. This means that if his office is moved from central London to a New Town, half or three-quarters of the staff may find their daily journey doubled; they will still be coming into London in the morning, only to cross London and travel onward, with the same doubled journey in the evening. This can only be avoided by a man's throwing up his work, or abandoning the home in which (very often, with this class of worker) his savings have been invested.

While therefore we agree that the tendency to establish new offices in London must be checked, and that firms which are increasing their staff can properly be required to place the increase in branch offices elsewhere, we think the removal of large existing offices will have to be a very gradual process.

River Pollution

Ever since the Rivers Pollution Prevention Act, 1876, it has been necessary to obtain the consent of the Local Government Board or its successors to certain legal proceedings for pollution. In the Rivers (Prevention of Pollution) Act, 1951, this requirement was re-enacted, in effect, with some change of scope, and legal proceedings by a river board might not be taken without the consent of the Minister of Housing and

Local Government. This requirement was however made subject to a time limit, and many people who are interested in the cleanliness of rivers hoped that at the expiry of seven years they would be free to take proceedings under the Act without having first to apply to an authority in Whitehall. Parliament, however, recognized that by 1958 those whose duty it was to avoid causing pollution might not have overcome all difficulties, and gave power to extend the period by Order in Council. This has now been done by an Order made in July, and accordingly the Minister's consent to prosecutions will remain necessary until the end of July, 1961. The extension is an unfortunate necessity, springing largely from financial restrictions which have prevented local authorities and others from installing plant. More has, however, been done than many people realize: failure to realize how much springs partly from the prominence given in the newspapers (rightly enough) to cases in the High Court, where pollution has been challenged on behalf of landowners, in proceedings which did not require the Minister's consent. Injunctions which have been granted, or threatened, but have had to be suspended, give an impression of neglect by those enjoined. Diatribes against the wickedness of Ministers, who have declined to give priority to schemes required to cure injury to a particular plaintiff, may have given an impression that the whole pace of advance has been slower than it really has. We ourselves have done what we could to stimulate progress, by calling attention to the reports of river boards and conservancy authorities, and the activities of associations concerned with fisheries.

We wish more could have been done, to slay what the Minister of Housing and Local Government has aptly called "the dismal devil of pollution." For all that, the Minister did well to take the opportunity of opening new disposal works for Dunstable, to tell the world that since the end of the war local authorities in England and Wales have undertaken more than £200 million worth of expenditure on sewerage and sewage disposal. It is costly work and in many places, because of growth of population or past neglect, there is still a long way to go. But it is a wise investment of the ratepayers' money. Councils which have had the courage to go ahead will reap their reward in the future absence of complaints. The Minister added that the best test of a sewage disposal works was that no one should hear of it, unless perhaps as a show place to which visitors were welcomed. Not only the fishermen and water users of today but the generations of the future stand to gain from modern treatment methods.

THE MAINTENANCE ORDERS ACT, 1958

By LAURANCE H. CROSSLEY, *Clerk to the Justices, Uxbridge, Middlesex*

This Act, which will come into operation on a date or dates specified by statutory instrument, will have considerable effects on the procedure for the enforcement of maintenance orders and in the office administration of such orders as are payable through magistrates' courts. It is in two parts: the first deals with the registration of High Court and county court orders for enforcement in magistrates' courts and of magistrates' court orders for enforcement in the High Court and the second with the making of Attachment of Earnings orders against persons in receipt of wages against whom maintenance orders have been made.

The Act applies to maintenance orders made under ss. 19–27, Matrimonial Causes Act, 1950; the Summary Jurisdiction (Separation and Maintenance) Acts, 1895–1949; s. 3 (2), s. 5 and s. 6, Guardianship of Infants Act, 1925; s. 4, Affiliation Proceedings Act, 1957; ss. 43 and 44, National Assistance Act, 1948; s. 26, Children Act, 1948; s. 87, Children and Young Persons Act, 1933; an order registered in England under part II, Maintenance Orders Act, 1950, and orders registered or confirmed under the Maintenance Orders (Facilities for Enforcement) Act, 1920.

PART I—REGISTRATION, ENFORCEMENT AND VARIATION OF CERTAIN MAINTENANCE ORDERS

Registration

Any such order, if made in the High Court or a county court can be registered in a magistrates' court and if made by a magistrates' court can be registered in the High Court (not in a county court).

The person entitled to payments under a High Court or county court order may apply to that court for registration. The court has a discretionary power to order registration: if it grants the application a period of time is prescribed during which no proceedings for enforcing the order shall be begun and no enforcement process shall be issued. If at the end of the prescribed period the court is satisfied that no enforcement proceedings or process is pending it sends a certified copy of the order to the magistrates' court for the area where the defendant lives. If the court is not so satisfied the grant of registration expires.

A person entitled to payments under a magistrates' court order, or the clerk of the magistrates' court if so requested in writing by the person entitled to receive payments under the order [unless the clerk considers such request to be unreasonable], may apply to the court making the order for registration in the High Court. Such an application must be granted if at the date of the application there are arrears under the order of four weekly payments or two payments if the order is for other than weekly payments. The grant of such an application bars enforcement proceedings being commenced prior to registration or any process being issued consequent upon proceedings commenced before the application. An existing commitment warrant becomes ineffective once the person in possession of it is informed of the grant unless the defendant has been arrested. When the magistrates' court is satisfied that no process remains in being it will send a certified copy of the order to the High Court.

Cancellation of Registration

An order that has been registered can be "de-registered." If the person entitled to payment under a registered order wants the registration to cease he may give a notice to that effect. Such a notice may be given by the High Court or a county court in respect of an order which it made and which is registered in a magistrates' court at the time it varies or discharges the order, and a magistrates' court must give such a notice in respect of an order it made which is registered in the High Court when it discharges the maintenance order if no arrears are outstanding. The service of a notice of cancellation affects pending process in the same way as an application for registration, and when the court of registration is satisfied that no process is pending, and in the case of

orders registered in magistrates' courts that no application for variation is pending, it shall cancel the registration.

Enforcement

Once an order is registered it is enforced in every way as if it had been made by the court in which it is registered. An order registered in a magistrates' court must, on registration, be ordered to be payable through the clerk of the court unless the magistrates' court is satisfied that it is unreasonable to do so.

Variation

A High Court or county court order which is registered in a magistrates' court may be varied as to its financial provisions by the court of registration or any other magistrates' court upon which jurisdiction is conferred by rules, and only by that court, except when a party to the order is not in England or where an application is made to the original court to vary some other provision of the order, when the rate of payment may be varied by the original court. When a magistrates' court varies a registered order the order, as varied, must not exceed the ordinary limits of a magistrates' court order or the amount of the order as made or last varied by the original court, whichever is the higher.

If an application is made to a magistrates' court to vary a registered order and it is considered that the appropriate limit is too low to permit the order to be suitably varied the application can be remitted to the original court which can then vary the order.

No application for a variation can be made if a similar application is pending in another court.

Appeal

An appeal lies to the High Court from a decision of magistrates to vary or to refuse to vary a registered order.

PART II—ATTACHMENT OF EARNINGS ORDERS

An Attachment of Earnings order is an order which directs a person who appears to be the employer of a person against whom a maintenance order has been made to make deductions from the employee's earnings and pay them to the court.

An order may be made by the court by which payment of arrears under a maintenance order is enforceable if there are arrears of at least four payments in the case of an order payable weekly or otherwise two payments, the defendant is in receipt of earnings and the court is satisfied that non-payment of the arrears is due to the defendant's wilful refusal or culpable neglect.

An Attachment of Earnings order may be made upon a specific application for such an order and also when proceedings are brought for arrears even though no application has been made for an attachment order, provided always that the requisite arrears existed when the proceedings were begun.

Contents of an Attachment of Earnings Order

An attachment order specifies two separate amounts:

(*a*) the normal deduction rate, that is the amount which, after taking into account the defendant's right or liability to deduct income tax from payments under the maintenance order, the court thinks reasonable to satisfy payments under the maintenance order and payment within a reasonable time of the arrears including any outstanding costs, and

(*b*) the protected earnings rate, that is the amount which the court thinks is reasonable to leave with the defendant for his own requirements and the needs of other persons for whom he must or reasonably may provide, after taking into account deductions made from his earnings for income tax, national insurance, national health and superannuation.

The order names the officer of the court to whom payments must be sent, which in the case of all attachment orders made by magistrates' courts is the clerk of the court, whether or not the maintenance order is itself payable to him.

An attachment order may be applied for by the person entitled to payments under the maintenance order, or, in the case of orders payable through a magistrates' court, by the clerk to that magistrates' court at the written request of the person entitled to the payments. Such a request may be refused by the clerk to the magistrates' court if he thinks that compliance with it would, in all the circumstances, be unreasonable.

Variation and Discharge of an Attachment Order

An attachment order automatically ceases to have effect

(*a*) when an application to register the order under this Act is granted, even though the grant becomes void;

(*b*) if the maintenance order is registered under this Act upon notice of cancellation being given;

(*c*) when a commitment warrant is made, issued or suspended;

(*d*) when the maintenance order is discharged when not registered under this Act: the court may, however, direct that the attachment order shall continue for the sole purpose of recovering arrears existing at the date of the discharge of the maintenance order;

(*e*) when the maintenance order ceases to be registered in a court in England or becomes registered in a court in Scotland or Northern Ireland under the Maintenance Orders Act, 1950.

When any of these events occur the appropriate court officer must inform the employer to whom the order was directed that the attachment order has ceased to have effect.

If an employer to whom an attachment order is directed notifies the court that at the time the order was served on him or at any subsequent time he has not employed the defendant during the previous four weeks the court must discharge the attachment order.

A court which has made an attachment order may at any time vary or discharge the order on the application of either the defendant or the person entitled to payments under the maintenance order.

An attachment order can only be made when there are arrears under the maintenance order of the specified amount. The normal deduction rate is calculated to satisfy the maintenance order and reduce the arrears. Accordingly, in time, the arrears are likely to be satisfied. When that position is reached the normal deduction rate provided by the order will exceed the amount of the maintenance order. In such an event, if no proceedings are pending to vary or discharge the attachment order, the clerk to the appropriate magistrates' court must apply to the court to vary the attachment order, and the court must thereupon appropriately vary the order, or, if the defendant appears and asks for the attachment order to be discharged, either discharge or vary the order in its discretion.

Responsibility of the Employer

An employer to whom an attachment order is directed has a legal obligation to comply with it. If, however, at the time the order is served on him, or at any subsequent time, he has not employed the defendant during the preceding four weeks

he must give written notice of that fact to the court which made the order whereupon the court must discharge the order.

On each pay day the employer must assess the defendant's relevant earnings, that is the amount due to the defendant since the last pay day or, if there is no previous pay day, since the date when the defendant entered into his employ, after deducting income tax, national insurance and national health contributions, and contributions to a superannuation scheme within the meaning of the Wages Councils Act, 1945. From this sum the protected earnings as specified in the attachment order are deducted, and the balance is available to satisfy the normal deduction as specified in the attachment order which is the amount assessed by the court to be paid in satisfaction of the maintenance order, the arrears and any outstanding costs. The employer then sends this amount to the court and may deduct 6*d*. from the balance due to the employee each time he makes a payment for the expense to which he has been put.

If, after deducting the protected earnings from the defendant's nett earnings the amount remaining is less than the normal deduction the employer will send this lesser amount to the court. If, in a subsequent week or weeks a balance remains after deducting the protected earnings and the normal deduction that balance will be used to make good the amount, either in whole or in part, by which previous payments to the court have fallen short of the normal deduction.

It may be that an employer has received more than one attachment order in respect of the same employee. In such a case the employer must satisfy the attachment order which first came into force to the exclusion of the other or others. Having done so he deals with the attachment order which next came into force taking for this purpose as the defendant's nett earnings the amount remaining after satisfying the first attachment order.

An employer who (*a*) fails to comply with an attachment order or (*b*) gives a notice that he has not employed the defendant during the previous four weeks which he knows to be false or which he makes recklessly and which is in fact false commits an offence and is liable to a fine of £10 for a first and £25 for a second or subsequent conviction, but it shall be a defence that he took all reasonable steps to comply with the order.

Determination whether or not Emoluments are "Earnings"

The employer, the defendant or the person entitled to payments under the maintenance order may apply to the court which made an attachment order to determine whether or not payments to the defendant of a specific class or description are earnings for the purpose of the order. The employer will be protected if he gives effect to the court's decision. An employer is further protected if in fact he has treated certain payments to the defendant as not being "earnings" although the court subsequently decides that such payments are "earnings." This protection is, however, limited to payments made whilst the application or an appeal from the court's decision on it is pending provided that the application is not withdrawn or the appeal is abandoned.

Power is given to make rules providing for these applications to be heard by a magistrates' court other than the court which made the attachment order. Section 77 (1), Magistrates' Courts Act, 1952, which provides for enforcing the attendance of witnesses by summons, applies to these proceedings.

The court which makes a determination whether or not a certain emolument is "earnings" may make such order as it thinks just and reasonable for the payment of costs by either the defendant or complainant in the maintenance order, or the employer. Costs awarded against the defendant are deemed to be a sum due under the maintenance order: costs awarded against the complainant or the employer are recoverable as a civil debt.

Statement of Earnings

When an application is made for an attachment order or proceedings are brought in a magistrates' court for arrears of at least four weekly payments or two payments if the order is payable other than weekly the court or a single justice of the peace may

(*a*) order the defendant to give to the court within a specified time a signed written statement showing the name and address of his employer(s) and such details of his earnings as are required; and

(*b*) order the employer to send to the court a signed written statement within a specified time giving such particulars of the defendant's earnings for a specified period as are required.

These statements shall be received in evidence in any proceedings for which they were required, and shall be deemed to be authentic unless the contrary is proved.

A person who fails to comply with such an order, or who sends a statement which he knows to be false or which has been made recklessly and which is in fact false incurs a penalty not exceeding £10 for a first and £25 for a subsequent conviction.

Application to Earnings Paid by the Crown

Attachment orders can be made in respect of earnings paid by the Crown, Ministers of the Crown or out of the public revenue. The head of a department is treated as the employer for this purpose, but he is not liable to conviction for failing to comply with the attachment order or for failing to notify the court that the defendant is not, or has ceased to be, employed by that department.

Any dispute as to which department or chief officer is involved will be decided by the Treasury: a document setting out the Treasury's decision will be admissible in evidence and be deemed to be accurate unless the contrary is shown.

Procedure

Section 74, Magistrates' Courts Act, 1952, which contained the procedure for dealing with cases of maintenance arrears has been substantially amended and it is accordingly thought to be convenient to set out the whole of the procedure under that section as amended. References are to the new subsections.

1. The court will only enforce arrears by order made on complaint.

2. No complaint must be made earlier than the fifteenth day after the making of the maintenance order: thereafter a complaint may be made at any time.

3. If at the appointed hearing the defendant appears but the complainant does not the court may dismiss the complaint or proceed in the absence of the complainant.

4. If at the appointed hearing the complainant appears but the defendant does not the court may proceed in the absence of the defendant if it is proved on oath or in the prescribed manner that the summons was served on the defendant a reasonable time before the hearing or, if it is an adjourned hearing, that the defendant has appeared on a previous hearing.

5. If the complaint is made on oath a warrant for the defendant's arrest may be issued, whether or not a summons has been previously issued.

6. No imprisonment shall be imposed if, after an enquiry in the defendant's presence, the court is of opinion that the default was not due to his wilful refusal or culpable neglect. Imprisonment must not be imposed unless the court considers that the making of an attachment order is inappropriate and in no case in the absence of the defendant.

7. The maximum term of imprisonment is six weeks.

8. Imprisonment for arrears does not discharge the defendant from his liability to pay the arrears.

Subsections 7 and 8 are operative from the date they come into force in respect of complaints made before that date. Commitments made and suspended before the operative date are unaffected.

Commitment to Prison for Arrears

The making of an attachment order prevents a committal order being made in any arrears proceedings then pending. It also prevents the issue of a commitment made and suspended before the date on which the attachment order was made.

The existence of an attachment order does not prevent a committal order being made. If one is made, whether or not it be suspended, the attachment order thereby ceases to have effect.

Where commitment to prison for arrears under a maintenance order has been suspended and the terms of the suspension have not been fulfilled by the defendant and the warrant accordingly falls to be issued the clerk of the appropriate court shall inform the defendant that he may apply for a further suspension of the warrant, stating his grounds, within a stipulated time. If no application is made within the stipulated time any justice may issue the warrant. If an application is made any justice may either issue the warrant or refer the application to the court. If the application is referred to the court both parties to the maintenance order are given notice of the time and place of the hearing of the application. The court dealing with the application may remit the arrears in whole or part, issue the warrant, further suspend it or, if it considers that changed circumstances justify such a course, direct that the warrant shall not be issued in any event.

A defendant who is serving a term of imprisonment for maintenance arrears may, if he is not in prison for any additional reason, apply to the court to cancel the committal warrant. He must state the grounds of his application, which will be referred to a justice of the peace. That justice may refuse the application or refer it to the court, in which case the clerk of the court gives notice to the governor of the prison and the person entitled to payments under the order of the date and place fixed for hearing the application.

On hearing the application the court may remit the arrears in whole or part, refuse the application or order that the commitment warrant shall cease to have effect if satisfied that the defendant cannot pay and that all the circumstances of the case justify such a course. If the court orders that the warrant shall cease to have effect it may fix a term of imprisonment for the amount owing and suspend its operation on such terms as it thinks fit. The new term of imprisonment shall not exceed the original term or the appropriate proportion of it if there have been part payments.

The notices required to be given for this purpose by the clerk of the court shall be deemed to be given if sent by registered post even though returned undelivered or for any reason not received by the addressee. Applications for the further suspension of committal warrants or for release from prison may be disposed of in the absence of either or both parties to the maintenance order.

Miscellaneous Matters

Applications to vary the financial provisions of orders registered in magistrates' courts, and applications to a magistrates' court for an attachment order or for the variation or discharge of an attachment order shall be by complaint.

An application for the variation or discharge of an attachment order may be heard by a magistrates' court although the complainant or defendant is outside England. If the defendant is in Scotland or Northern Ireland he must be served with the summons in accordance with s. 15 of the Maintenance Orders Act, 1950: if he is otherwise abroad the court may proceed in his absence if satisfied on oath or in the prescribed manner that the complainant has taken the prescribed steps to bring the complaint and the time and place fixed for the hearing to the notice of the defendant.

The power of the court to discharge or vary an attachment order on the application of the defendant is deemed, for the purpose of s. 43 of the Magistrates' Court Act, 1952, to be a power to make an order against the person in whose favour the attachment order was made. Similarly the power to vary or discharge an attachment order on the application of any other person is deemed to be a power to make an order against the defendant.

The six months period of limitation does not apply to applications for attachment orders.

Proceedings may be brought to recover maintenance arrears although all or part of the sum has already been the subject of proceedings whether or not an order was made in any prior proceedings.

COMMENTS ON THE OPERATION OF THE MAINTENANCE ORDERS ACT, 1958

Attachment Orders

The introduction of the power to make attachment orders will bring a " new look " to a sizeable proportion of proceedings to enforce arrears under maintenance orders. Although the making of an attachment order is only possible when the defendant is in receipt of earnings there will be many defendants against whom orders can be made. It may well transpire that the making of an attachment order will be the usual method of enforcing maintenance orders and that the making of a committal order will become a comparative rarity. The procedure in force prior to this Act coming into force will still apply to those defendants who are not in receipt of earnings.

Before a court makes an attachment order it will need to know certain facts. Initially it will not be known whether or not the defendant is receiving earnings: if he is his employer's identity and details of the earnings and particulars of the defendant's financial liabilities will also be unknown. It will be an advantage when arrears proceedings are brought if the court is in possession of as much of the requisite information as possible at the hearing. For these reasons, and to avoid adjournments, it is suggested that a convenient procedure will be as follows:

After obtaining the authority of the person entitled to payments under the order the clerk of the magistrates' court applies for a summons for arrears with a hearing date fixed, say, a month ahead. If the summons is granted the clerk

then applies to a justice for an order that the defendant shall give to the court within, say, seven days a signed statement setting out the name of his employer(s), such particulars of his earnings as are required and any particulars, such as his works number and place of employment, as will identify him to his employer. If the receipt of this information discloses that the defendant is employed the clerk of the court applies to a justice for an order that the employer shall send to the court within, say, 14 days a signed statement setting out such details of the defendant's earnings as are required, say his gross and nett earnings during the preceding six months.

The information thus available, added to that which will be obtained from the defendant as to his personal liabilities, will place the court in possession of all the facts which must be known before an attachment order can be made.

Once an attachment order is made it continues in force until varied or discharged. The clerk of the court must keep the order under careful review because he has the responsibility of applying for the variation of the order when payments under it have satisfied the arrears and the normal deduction rate, which was an amount sufficient to pay the order and reduce the arrears, is in consequence more than is required merely to pay the order.

Although an attachment order cannot be made unless there are arrears it can continue in operation after the arrears have been paid. It is thus possible for an attachment order to continue in operation for years after the arrears are paid: if this is so the woman will obtain prompt and regular payments, the clerk of the court will be involved in nothing other than the routine receipt and payment of the money and the man may well appreciate the responsibility of seeing that payments under the order are made being removed from his shoulders.

Payments received by virtue of an attachment order are deemed to be payments made under the maintenance order and are allocated to discharge sums due at an earlier date before sums due at a later date.

A source of difficulty in operating attachment orders may be created by the practice of employers making "subs" to their employees. A "sub" may take one or two forms: either an advance of wages or a loan to be recovered out of future wages. It is submitted that if an employer makes a "sub" to an employee in respect of whom he is operating an attachment order which is a part payment of wages that the attachment order must be operated in relation to the "sub" in the proportion which the "sub" bears to the weekly wage. Thus if the "sub" is of half the weekly wage half the normal deduction must be sent to the court provided that half the protected earnings rate is left with the employee. If the "sub" is a loan the employer must operate the attachment order in full and make his own arrangements with his employee to recover what is a private debt and as such outside the operation of the attachment order.

Commitment for Arrears

A note of caution must be introduced with regard to one of the consequences of imprisonment for maintenance arrears not "wiping out" the debt. Proceedings may be brought for arrears although the defendant has already served a term of imprisonment in respect of them. One amount of arrears will be before the court and this amount may be made up of arrears for which imprisonment has been served and arrears for which no previous order has been made. Although one amount of arrears is before the court an order of commitment can only be made in respect of part of them, and great care must be exercised to see that an order of commitment is not made in respect of arrears for which imprisonment has already been served. If magistrates were to commit a man to prison for arrears for which he had already served a term of imprisonment they would presumably be acting without jurisdiction and consequently liable for damages.

The fact that a defendant cannot be committed twice for the same arrears does not mean that proceedings to recover such arrears are purely academic. An attachment order, if appropriate, can be made in respect of them, and, in view of the prescribed allocation, they will be the first to be discharged by payments under the attachment order.

Income Tax Deductions

High Court and county court maintenance orders can be made for amounts which exceed the "small maintenance order" limits, which are £5 for a party to a marriage and 30*s*. for a child. It follows that if such orders are registered for enforcement magistrates' courts will administer orders from which income tax can be deducted.

Those magistrates' clerks whose experience goes back to the pre-small maintenance order days will remember the administrative difficulties caused by defendants deducting income tax from their payments under their orders. They will anticipate the recurrence of these difficulties with an understandable despondency which will ripen to despair when they realize that a series of variations may cause an order to enter and leave the small maintenance order limit. It is, however, a prospect from which there is no escape; the only legislative possibility to avoid this position would be to make all orders payable to a magistrates' court "small maintenance orders" and this is out of the question as not only would it unfairly discriminate between registered and unregistered orders but would also involve a loss of revenue.

Rules

The whole picture of the Maintenance Orders Act, 1958, will be incomplete until the rules authorized by the Act are made. These will fill in all the missing administrative detail. It is understood that the Act will not come into force until the rules have been made and published and sufficient time has elapsed to enable those who will be called upon to administer the Act to become well acquainted with their provisions.

ADDITIONS TO COMMISSIONS

NORTHUMBERLAND COUNTY

Robert William Foggett, 3 Dene Grove, Seghill, Northumberland.
Mrs. Kathleen Vera Jenner, 23, Seaton Crescent, Monkseaton, Whitley Bay.
Mrs. Florence Patricia Jennings, Newbiggen House, Cambo, Morpeth.
Allan Smart, Laudervale, Sheepwash Bank, Choppington, Northumberland.
Richard William Thomson, 5 Prince Charles Road, Scremerston, Berwick-on-Tweed.

NORFOLK COUNTY

Mrs. Ethel Louise Deterding, Kelling Hall, Holt, Norfolk.

STAFFORD COUNTY

Frank Baker, 39, Horton Street, Darlaston, Wednesbury.
Harry Goodwin, Wallhill, Broad Street, Leek.
Thomas Griffiths, 68 Powis Avenue, Tipton.
John Albert Parker, 23 Larches Lane, Wolverhampton.

YORKS NORTH RIDING COUNTY

Alastair George Sharp, M.B.E., Hollybush House, Old Lane, Bramhope, Yorks.

PLANNING ENFORCEMENT DILEMMAS

In 1951 the case of *Perrins* v. *Perrins* (1951) 115 J.P. 346; [1951] 1 All E.R. 1075 was decided, and this has had a widespread effect on enforcement notices. Under s. 23 (4) of the Town and Country Planning Act, 1947, an opportunity was given within a period specified in the enforcement notice, not being less than 28 days, for the recipient of the notice to appeal either to the Minister or to a court of summary jurisdiction. The appeal to the court was limited to certain specified grounds; namely, that there was an effective planning permission; that no planning permission was required, or that the conditions subject to which consent was given had been complied with. The developer could also complain that the requirements of the notice were excessive and should be varied. *Perrins* v. *Perrins* decided that, where the opportunity was given to the recipient of the notice as owner or occupier to object within the 28 days, he could not take any point that came within s. 23 (4), if he was subsequently prosecuted for failing to comply with an enforcement notice under s. 24 (3). It was clear from the wording of s. 24 (1) that if it was not a change of use that was alleged but a "building, engineering, mining or other operation" then, when the restoration of the site was carried out by the planning authority, he could not raise such a defence when faced with the cost. Section 24 (1) specifically states: "he shall not be entitled in proceedings under this subsection to dispute the validity of the action taken by the local planning authority upon any ground which could have been raised by such an appeal." It seemed logical that the planning authority, having expended money on remedying the position, should not face such a defence when they sought to recover the cost. There was no such wording in s. 24 (3).

The case of *Perrins* v. *Perrins*, once decided by the Divisional Court as the final court in a criminal matter, is not readily overruled. The Court of Criminal Appeal, also a final criminal court in certain trade protection society cases, has refused to accept a ruling of the Court of Appeal as binding. It remains to be seen whether the Divisional Court will follow their example. A test case might arise from the recent decision in *Francis* v. *Yiewsley and West Drayton U.D.C. and Another* (1958) 122 J.P. 31; [1957] 2 All E.R. 529 where the Court of Appeal has stated that *Perrins* v. *Perrins* was wrongly decided. Will the Divisional Court accept this ruling? So far as courts of summary jurisdiction are concerned, it is submitted that the court must still accept *Perrins* v. *Perrins* but, if an appellant was bold enough and had the financial resources to state a case, it might happen that the Divisional Court would follow the Court of Appeal. The fact that the *Yiewsley* case was a civil action and *Perrins* a criminal proceeding is explained by details of the former case. An enforcement notice alleged that development had been carried out without permission, whereas in fact the Minister had on appeal given a temporary consent for six months. The time for appeal against the notice had elapsed. The planning authority did not take proceedings but, after nearly four years had elapsed, the developer sought a declaration that the notice was invalid because the statement that the development had been without permission was wrong. The Court decided that despite *Perrins* v. *Perrins* it was not precluded from granting a declaration.

In the uncertain position created by the cases of *Perrins* v. *Perrins* and *Francis* v. *Yiewsley and West Drayton U.D.C.* comes the more recent case of *Pyx Granite Co., Ltd.* v. *Minister of Housing and Local Government and Another* (1958) 122 J.P. 182; [1958] 1 All E.R. 625. The main point of the case was outside this particular question but, as an initial point, the question was raised whether a declaration was possible where the Minister had already determined that there was development in an application to him under s. 17 of the Act of 1947. There was a majority decision (Lord Justice Hodson dissenting) that a declaration could overrule a Minister's decision. Lord Denning pointed out that otherwise the decision of the Ministry could only be questioned by a developer spending money on unauthorized development (if development at all) which would invoke an enforcement notice. If appeal to the court was turned down the development would have to be removed at substantial expense. A declaration was a method of obtaining an early decision. The case of *Pyx Granite Co., Ltd.*, raises further interesting points. If a declaration could overrule a Minister's decision could it also overrule a decision of the court of summary jurisdiction under s. 23 (4). The *Yiewsley* case only dealt with a declaration, where the time for appeal had passed without the making of an appeal, not where an appeal was refused. If an appeal to the Minister under s. 17 or to the court under s. 23 (4) had been allowed, could the local planning authority try to overthrow this by declaration, and if not why not—as not only a prospective developer has interests to be protected but also his neighbours.

The further point arises if the dissenting view of Lord Justice Hodson were to be accepted by the House of Lords (to whom leave to appeal has been given) what would be its effect on the two earlier cases of *Perrins* v. *Perrins* and *Francis* v. *Yiewsley and West Drayton Urban District Council*.

One of the greatest dilemmas in planning law has been created by the recent case of *Eastbourne Corporation* v. *Fortes Ice Cream Parlour* (1955) *Ltd.* [1958] 2 All E.R. 276. The recipient of an enforcement notice can appeal to a court of summary jurisdiction against the notice within 28 days under s. 23 (4) of the Town and Country Planning Act, 1947, on certain stated grounds one of which is that no permission was required for the development. The wording of the section is "that no such permission was required in respect thereof" and this permission has regard to "the development to which the notice relates." The question has arisen whether an appeal can be made on the ground that there has been no development and therefore no permission is required or whether it is limited to cases of development (as opposed to no development) for which permission is actually not required. These cases include all developments before the appointed day (s. 12 (1)), those changes of use specified in s. 12 (5) and the operations described in the proviso to s. 12 (3) (*b*) of the 1947 Act. In a case in 1954, *Keats* v. *London County Council* [1954] 3 All E.R. 303, the Divisional Court decided that the magistrates could not go behind the planning authority's allegation of development but following certain *dicta* of the House of Lords in *East Riding County Council* v. *Park Estate* (*Bridlington*) *Ltd.* [1957] A.C. 233, a case concerned with development before the appointed day the Lord Chief Justice in *Norris* v. *Edmonton Corporation* [1957] 2 All E.R. 801 said that the *Keats* case was no longer good law as it had been overruled by the *East Riding* case.

This view has now been rejected by the Divisional Court by a majority of two to one (Lord Goddard dissenting) in the *Eastbourne Corporation* case despite the fact that Lord Goddard pointed out a matter not before the court in *Keats* case, namely, the proviso to s. 17 (2) of the 1947 Act. This states that the Minister's decision shall not be final for the purposes of any appeal to a court under the provisions relating to enforcement control in deciding that any operations or use constitute or involve development which implies that the court under s. 23 (4) can go into questions relating to what constitutes development. The practical effect of the majority decision is that the defence of no development cannot be alleged before the magistrates under s. 23 (4) whether it arises by the fact that the proviso to s. 12 (2) excludes certain matters from development or the development is excluded from control by the fact that it has taken place more than four years ago but not before the appointed day.

The further question arises whether this recent case has the practical importance it would have had earlier because if *Perrins* v. *Perrins, supra,* is overruled by the Court of Appeal decision in *Francis* v. *Yiewsley and West Drayton U.D.C.* then such defences can be raised on a subsequent prosecution under s. 24 (3) for a change of use without permission and therefore the developer has not lost his sole right of defending his position.

THE SICK AND THE AGED FOR 10 YEARS

By JOHN MOSS, C.B.E.

One of the chief reasons for the introduction of the National Health Service, as described by then Minister of Health (Mr. Aneurin Bevan) was that money ought not to be permitted to stand in the way of obtaining skilled medical care and treatment. Re-organization of the hospital service was also necessary because the facilities were uneven throughout the country. About 70 *per cent.* had less than 100 beds and over 30 *per cent.* had less than 30 beds.

The provision of what are called the ancillary services was also inadequate. Only about 25 *per cent.* of those needing spectacles could obtain them through the approved societies. More than 90 *per cent.* of old people need to use spectacles but at least one-third were obtaining them from multiple stores without any optical investigation. Deaf people could not obtain reliable hearing aids which they could afford. The provision for dental treatment and especially for dentures was inadequate, although some help could be obtained from public assistance authorities and approved societies.

In these respects the new service has been a great boon to large numbers of people. During the latter half of 1948 1,800,000 spectacles were supplied—all after expert testing. Seven million were supplied in 1949. Even though many had been supplied in the intervening years, four million were supplied in 1957. Elderly people have benefited greatly by the supply of hearing aids. Forty-one thousand were supplied in 1949 and 52,166 in 1957.

The shortage of dentists made it difficult to bring into operation a complete dental service but the position has since improved. There were 9,495 dentists working in the National Health Service in 1949 and the number had increased to 10,156 by 1957. In 1949 nearly four million people had treatments; in 1957 over seven million and the number was estimated at eight million for 1958. Nearly three million dentures were supplied in 1949 and rather more than a million in 1957.

Originally it was planned that these various anciliary services should be provided free—at the time they were received because it must always be remembered that the term "free service" is quite inappropriate in view of the enormous cost of the National Health Service to the taxpayers and the ratepayers, quite apart from the contributions under the National Insurance scheme. Expense on the anciliary services increased so considerably, however, that successive governments felt that a charge should be made to meet part of the cost while making it possible for the National Assistance Board to help those who had not the means to pay. These arrangements have worked satisfactorily. Experience, both in this country and abroad, shows that people sometimes appreciate what they pay for more than what they are given free.

The cost of the National Health Service is enormously higher than when it was estimated at £352,300,000 for the first full year (1949–50) in England, Wales and Scotland. In fact it cost £436 million. The cost for 1956–57 was £604,100,000. Three-fourths of the expenditure was in respect of running the hospitals and, of this, 60 *per cent.* is for staff. Eighty *per cent.* of the total expenditure is met by rates and taxes, eight *per cent.* by charges and 12 *per cent.* by the flat rate contributions collected under the health and national insurance scheme.

It has been argued that the increased cost has been little higher proportionately than the rising of costs generally, the hospital costs for 1958–59 being only four *per cent.* more than in 1957–58.

The Hospitals Before 1948

Surveys made of the hospitals throughout the country showed a very uneven pattern but the most serious feature of the reports on these surveys was the continual reference to the gross inadequacy in the care and treatment of the aged sick. Many old people suffering from one of the chronic diseases could get no treatment at all. There was a tendency to take the view that as these people were old all that was necessary was to keep them warm and free from bedsores and give them a wholesome diet—often very unappetising. The voluntary hospitals concentrated on the acute short-stay patient.

The treatment available for some of the elderly patients in the former workhouses had improved when they were transferred from the boards of guardians to the public assistance authorities in 1930 but sometimes the medical staffs were so anxious to convert them into general hospitals that the condition of the chronic sick became even worse.

Before the Minister became responsible for the hospital service one of the immediate problems was to decide as to which authority should be responsible for each of the institutions which had been the responsibility of the local authorities as the successors to the boards of guardians. This was divised on the basis of the predominant user. Those which had more beds for the sick were transferred to the hospital authority and those which had more accommodation for the non-sick remained with the local authorities. There thus arose the "joint-user" establishments. In spite of some administrative difficulties the arrangement seems to have

worked reasonably well and in some respects has been an advantage to those who are hovering between infirmity and ill-health. If they are under the same roof it is easier in practice to move them to more suitable accommodation in the same premises than if they are in different premises—although in theory the position should be the same even if they are in different premises.

But sometimes joint-user, when the premises have been transferred to the hospital authority, has resulted in a reduction in the accommodation available for the non-sick. If local authorities had known in 1947 what would be the position in 1958 they would probably have pressed to be allowed to retain more accommodation under their own control.

Hospitals—The New Plan

After considering the surveys it was generally thought that an efficient hospital unit should comprise at least 1,000 beds—not necessarily in the same building—so that all necessary general and specialist services could be provided. This was one of the reasons for linking up the hospitals in regions with a teaching hospital in each region.

In one of the first circulars from the Ministry of Health to regional hospital boards they were asked to make sure that in carrying out their plans they were not depriving local patients of a valuable feature of the cottage hospitals whereby local practitioners could admit patients who required treatment within the general scope of general practice but who for various reasons could not be treated at home. There has been some feeling that this view has not been generally followed and there is a further feeling in some quarters that a patient's own doctor should have access to him in hospital.

It has sometimes been suggested that persons admitted to hospital should contribute at least towards the cost of board and lodging—as distinct from nursing and medical treatment—if they are able to do so. It is anomalous that in this respect the position is different to that prevailing on the admission of a person to an old people's home.

Medical treatment was hampered in many parts of the country by the lack of specialists. It was an inherent part of the new scheme that specialists, or consultants, should be available not only in hospitals but for domiciliary visits. The number of consultants and specialists increased from 4,711 in 1949 to 6,706 in 1957. With their help it has been possible to develop very considerably the out-patient treatment available at the various hospitals. There were over 26 million attendances in out-patient departments in 1949 and nearly 28 million in 1957. In that year nearly seven million patients visited these departments for the first time.

It is agreed that some new hospitals are needed and many require improvement. There has, however, been some increase in hospital beds—in teaching hospitals from 26,000 to about 28,000 and in non-teaching hospitals from about 475,000 to about 481,000. Bed occupancy and this is of course an important point has increased considerably in the teaching hospitals from 79 to 83 *per cent.* In many hospitals there are still long waiting lists but the actual waiting time has been reduced and there is much more rapid turnover of beds. But patients can only be discharged if they have somewhere to go where they can have any necessary further care and treatment. There were 503,584 persons on hospital waiting lists at the end of 1951 and 440,359 at the end of 1957.

One of the greatest obstacles to the provision of increased hospital facilities is the shortage of nurses which was prevalent even before the new scheme came into operation. The position has gradually improved and the full-time nursing staff increased during the last 10 years from 133,000 to over 176,000 and the part-time staff from 18,000 to 43,000. New entrants to the nursing service have increased to over 20,000 a year but unfortunately about half this number leave before completing their training.

Ninety-seven *per cent.* of the population are on the lists of general medical practitioners working under the National Health Service. Medical attention is of course their responsibility but the discharge of some patients from hospital is only made possible through the efficiency of the local health services especially through the home nurses and the home helps. It is so necessary that there should be close co-operation between the hospital and the local health service that it is unfortunate that the medical officer of health in many areas has little opportunity to co-operate with the medical staff of the hospitals. There are sometimes complaints that the local health department is not informed—such as through the almoner—of the discharge from hospital of a patient who will need the help of the department. This seems to be a matter in which, in some areas at any rate, there should be better co-operation for the benefit of the patients concerned.

The local health services are so costly to the local authority that it has often been argued as to whether it is reasonable to expect them to incur this increasing expense and so relieve the Government of some of the cost of hospital treatment. Local authorities have however—with few exceptions—taken the right view and have agreed that in spite of the cost they should help to get patients out of hospital by providing domestic help and home nursing services up to the limit of their resources and sometimes only restricted by the woman labour available.

When the new scheme was before Parliament there was some controversy as to whether the ambulance service should be the responsibility of the local authorities or of the hospitals. It was decided, however, that the local authorities should be responsible. Many difficulties have been experienced in providing this service and in keeping the cost at a reasonable figure. When the scheme came first into operation there was some abuse of the service by patients going by ambulance when they could quite well go by bus, and through doctors—both in and out of hospital—making unnecessary demands on the service. There have been several investigations of this matter from the cost aspect. From the point of view of the patient who cannot get to hospital, or even for out-patient treatment, without being conveyed at the public expense the ambulance service has been a great boon. During the year 1950–51 nearly seven million patients were carried by ambulances and by 1956–57 the number had been increased to nearly 15 million. The average number of miles per patient was, however, reduced from nine miles in 1950–51 to 6·6 miles in 1956–57. Radio control of ambulances has been one way of reducing the cost. One local authority introduced this system in 1948–49 but by 1956–57 98 had done so or 67 *per cent.* of them as a whole.

The Aged Sick

When the new scheme was introduced it was hoped by those who were specially concerned with the care of the aged, that the chronic sick wards would be part of the big acute sick wards so that the same medical attention would be available for them as the acute sick. It was considered by those who took this view—and their view has proved to be correct by those enlightened hospital authorities who have followed this practice—that no person should be admitted to a chronic sick ward without passing through an acute sick ward of a large hospital where he could be seen by a specialist. When people grow feeble in old age there is a very

narrow borderline between sickness and health and there should, therefore, be a simple, easy flow to and from hospital.

In many parts of the country, but not unfortunately everywhere, the elderly sick person can get the best skilled medical care which used to be available only for the acutely ill. This applies particularly in those 80 areas in which geriatric units have been established. Where there is such a unit—and many more are needed—the physician in charge is especially concerned in the medical care of the elderly. Unfortunately there are not yet enough doctors who realize the importance of this. Those who have been the pioneers in this field have shown what can be done for the happiness and comfort, if not for the curing of the elderly chronic sick. They have shown in particular that the old-fashioned idea of keeping them in bed continuously is quite wrong.

If the policy advocated by the British Medical Association several years ago of "the right patient in the right bed" had been given full effect many hospital patients would not be in hospital and, if they could not return to their own homes, would be in homes provided by the local authorities under the National Assistance Act. Sometimes there have been disagreements as to whether a particular person should go to hospital or to an old people's home. In a few areas this matter has been facilitated by the local authority and the hospital jointly appointing a medical officer to advise them. In other areas all applications for admission to hospital, and sometimes to a home, are considered by a representative of the hospital authority or of the local authority with the patient's own doctor.

There has been a great improvement in the hospitals throughout the country and although more could have been done if more money had been made available for new construction it is as well to remember that the care given to patients does not necessarily depend on the construction of the building. The former workhouses which still are used for the sick—although some of them have been closed and others used only for the non-sick—have a very gaunt appearance externally. But it is to the credit of those concerned that many internal improvements have been effected. Some excellent work—and much pioneering work—is being done on these premises.

(to be concluded)

MISCELLANEOUS INFORMATION

COUNTY OF NORTHAMPTON: CHIEF CONSTABLE'S REPORT FOR 1957

In his general remarks the chief constable says "the amount of police time which has to be spent in dealing with road accidents, control of traffic, endeavouring by advice, caution or prosecution to persuade the motorist that the complicated legislation of the Road Traffic Acts should be complied with is incalculable." There was, however, a welcome decline from 35 in 1956 to 16 in 1957 in the number of prosecutions of drivers who had had too much to drink. The number of traffic accidents resulting in death or personal injury also decreased, but only by 62, to a total of 1,179. There were a further 776 other traffic accidents reported to the police.

On crime the chief constable remarks that the continued increase in crime is very disturbing and, in times of full employment, can be attributed only to a general decline in moral standards. This is undoubtedly one explanation; there is also the possibility that present day methods of dealing with criminals do not deter them from continuing a life of crime or discourage others from following their bad example. The total number of crimes, 1,742, showed an increase of 14 *per cent.* on 1956 figures, and gave the highest total ever recorded in the county. In particular there was an increase of 76 in breaking offences, almost one third of the total increase of 222. Corby has a particularly bad record with 11 crimes per thousand of population compared with the whole county's average of six per thousand. It is hoped that the additional police which the improvement in recruiting has made available will yield good results in Corby.

The chief constable is able to report that during the latter part of 1957 recruiting improved considerably and there was a net gain in strength of 17, leaving a deficiency of only two men and two women. The present establishment is 325 men and 13 women. In 1949 an establishment of 350 men was approved in principle and it is hoped that with actual strength so close to present establishment the increase will be authorized. It is pointed out that the additional rest day per fortnight means, on an establishment of 350, that an additional 31 men will be non-effective throughout the year.

Recruiting for the special constabulary was not so satisfactory. Only 14 new entrants came forward to replace 39 losses, giving a strength on December 31, 1957, of 484. It is thought that there is a need to recruit younger men and that the retirement of inactive and unfit members should be considered. These were among the matters discussed at a conference of special commandants held in November, 1957.

COUNTY BOROUGH OF DERBY: CHIEF CONSTABLE'S REPORT FOR 1957

Special mention is made of the visit of Her Majesty the Queen and His Royal Highness the Duke of Edinburgh to Derby in March, 1957. The special constables, who number 94, gave able assistance to the regular force on this important occasion.

It is regretted that special efforts made during the year to increase the number of "specials" were not successful and there was, in fact, a decline of three in the active members. The chief constable expresses his thanks to all ranks for the way in which they have responded to the many calls made upon them during the year.

Recruitment for the regular force was hardly more satisfactory, resulting in a net gain of only one. This gave a total strength on December 31, 1957, of 219. The establishment is 240. It is noted in the report that during a recent "careers exhibition" several inquirers at the police stand expressed the view that the monetary reward of a constable is poor, bearing in mind his arduous duties and responsibilities, and the chief constable feels that pay is still one of the reasons for the dearth of recruits. It may well be that competition from industry in Derby emphasizes this point. It is still necessary for a large percentage of the force to work a 48 hour week in order to provide adequate police supervision in the borough.

There were 1,737 recorded crimes, an increase of 26·9 *per cent.* on the 1956 figure of 1,368. There was a considerable increase in larcenies from shops and stalls (132 to 188). and the chief constable calls attention to the fact that with the modern methods of displaying goods supervision by shopkeepers and stall-holders is essential and must be adequate. There was also a large increase in sexual offences (75 to 132). The number of offences for which juveniles were responsible did not increase to the same extent as did the figures as a whole. The 1956 figure was 239 and that for 1957 was 265.

One thousand, six hundred and ninety-seven persons were prosecuted for road traffic offences and there were also 818 cautions. There were 751 road casualties during 1957. The majority, in the chief constable's view, were undoubtedly the result of carelessness or thoughtlessness by road users. There is close liaison with the borough engineer's and surveyor's department and physical measures to improve road safety are undertaken by that department whenever practicable.

THE ADVISORY COMMITTEE ON THE EXAMINATION OF STEAM BOILERS IN INDUSTRY

Evidence Invited

The Advisory Committee on the Examination of Steam Boilers in Industry which, as announced by Mr. Iain Macleod, Minister of Labour and National Service, in the House of Commons on May 22, has been set up under the chairmanship of Mr. G. G. Honeyman, C.B.E., Q.C., has decided to invite evidence from interested individuals and organizations.

The committee wants evidence on all matters falling within its terms of reference, which are "to consider the existing legal provisions concerning the examination of steam boilers in the light of modern developments in design and construction, the size of units installed and the use of nuclear reactors as a source of heat; and to advise the Minister of any changes which appear desirable."

Persons or organizations wishing to give evidence are asked to communicate with Mr. J. L. B. Garcia, secretary of the committee, at the Ministry of Labour and National Service, 19 St. James's Square, London, S.W.1.

KINGSTON-UPON-HULL CIVIC PURSE

Hull city treasurer, Mr. C. H. Pollard, C.B.E., F.I.M.T.A., F.S.A.A., has produced an excellent summary of the finances of the considerable city he serves. It exceeds in compression any similar publication we have yet seen, being contained on two sides of a single foolscap sheet and yet manages successfully in this small space to get across many of the basic and vital features of the city's finances.

An analysis of the way in which each £ of the rates is to be spent in 1958–59 shows that a third will go on education and, as compared with the counties, the relatively large sum of 2*s.* 3*d.* on highways (county boroughs receive no highway grants). We observe also that 1*s.* 4*d.* of the £ will be required for housing, representing a total charge to rates of £328,000, and that Government grants amount to £302,000: in contrast with these public subsidies of £630,000 rents are estimated to produce £838,000.

There are approximately 91,300 houses in the county borough, 70 *per cent.* of which have a rateable value of £17 or less. On a house of this rateable value the weekly rate charge is 7*s.* 4*d.* The rate levied for 1958–59 is 22*s.* 6*d.*

The corporation control a number of trading undertakings including transport, water, civic catering and uniquely, telephones. All, with the exception of the telephone service, produced a surplus of income over expenditure for the year 1956–57.

Loan debt outstanding at April 1, 1957, totalled £28,500,000: total capital outlay up to that date was £44,000,000 of which nearly £18,000,000 had been incurred on housing. Corporation owned houses, flats and shops numbered at the same date 22,000, that is almost a quarter of the total number of houses in the city.

RECREATIONAL CHARITIES ACT, 1958

The main object of this Act is to give statutory recognition to the charitable nature of certain trusts and institutions which exist for the purpose of providing recreational or similar facilities, or whose purposes include the provision of such facilities, in the interest of social welfare. Many such trusts and institutions were commonly regarded as charitable until the case of *Commissioners of Inland Revenue* v. *Baddeley* (1955) A.C. 572; but the governing instruments often contain terms similar to those considered in that case, and considerable apprehension has been felt as to the effect of it. When the Bill was considered in the House of Lords it was pointed out that both the Nathan Committee on Charitable Trusts and the Royal Commission on the Taxation of Profits and Income had recommended that the field of charity in its legal implication should not be extended. It was explained on behalf of the Government, that it was not their policy to enlarge the definition of charity or to make new classes of trusts or admit to the field the particular type of trust which was before the House of Lords in the *Baddeley* case. The object was to distinguish those types of charity which had been regarded as charitable in the past and should in the view of the Government, be restored to that position.

The Act provides accordingly in s. 1 that, it shall be and be deemed always to have been charitable to provide, or assist in the provision of, facilities for recreation or other leisure-time occupation, if the facilities are provided in the interests of social welfare subject to the general principle that a trust or institution to be charitable must be for the public benefit. The requirement as to the facilities being provided in the interests of social welfare will not be treated as satisfied unless (*a*) the facilities are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended; and (*b*) either (i) those persons have need of such facilities by reason of their youth, age, infirmity or disablement, poverty or social and economic circumstances; or (ii) the facilities are to be available to the members or female members of the public at large. The Act therefore applies to village halls, community centres and women's institutes, and to the provision and maintenance of grounds and buildings to be used for purposes of recreation or leisure-time occupation and extends to the provision of facilities for those purposes by the organizing of any activity.

The Lord Chancellor emphasized when the Bill was before the Lords that the Government had felt need for great caution in venturing on this legislation and had exercised much care to avoid even an appearance of encroachment on the traditional functions of the courts. During the debate some concern was felt at the inclusion of the words "members or female members of the public at large." It was explained that these words had been inserted to protect the position of women's institutes and to ensure that there was no doubt about their charitable status even although they were for one sex; while still excluding, as previously, clubs for men only which were mostly "self-regarding." Some members felt, however, that there was a possibility of some women's clubs which might also be "self-regarding" taking advantage of the Act.

Section 3 provides that nothing in the Act shall be taken to restrict the purposes which are regarded as charitable independently of the Act and makes special provision whereby the Act cannot apply to past transactions in the courts or otherwise.

SHEFFIELD MAGISTRATES' COURTS COMMITTEE

Although the reports of magistrates' courts committees are mostly of local interest, some of them contain items worth notice outside their own areas. Thus, if there are still some people who think that most local appointments, including those of clerks to justices, are "cut and dried" and that advertising is a mere formality they might be surprised to read what is said in the 1957 report of the Sheffield magistrates' courts committee.

Before appointing a successor to Mr. Leslie Pugh, who resigned the appointment of clerk to justices in order to become stipendiary magistrate at Huddersfield, the magistrates' courts committee advertised extensively and subsequently interviewed seven applicants, all of them solicitors who were already clerks to justices. After that it was decided to advertise again and several further applications were received. At another meeting of the committee four new applicants were interviewed and also one of those previously interviewed. Of the four new applicants three were already clerks to justices and the other a deputy clerk. Ultimately it was unanimously resolved to offer the appointment to Mr. J. W. Owen, then joint clerk to the Rotherham county borough justices and a large division in the West Riding. Before becoming a clerk to justices Mr. Owen had spent 27 years in the clerk's office at Sheffield.

A special fund for providing legal aid in matrimonial and other civil cases, generously supported by some of the justices has done something to make up for the lack of such aid at present under the Legal Aid and Advice Act. It is stated that the special fund enabled several deserving wives to obtain orders, wives who until awarded legal assistance had failed to do themselves justice in court. Many cases involve long preparation beforehand to ensure

that essential witnesses are called and documentary exhibits—such as correspondence which has passed between the parties—are sifted and arranged in logical sequence.

COUNTY BOROUGH OF BIRKENHEAD: CHIEF CONSTABLE'S REPORT FOR 1957

Although this force, with an authorized establishment of 393, is only 28 below establishment that deficiency in strength is sufficient to prevent the working of the 44-hour week authorized in 1956. Thirty-five candidates were accepted during the year and as there were 27 losses from various causes there was a net gain of eight.

The special constabulary is gradually declining in numbers. Its strength is now 127, although the authorized number is 450. The commandant retired in September, 1957, after 31 years' service. The chief constable thinks that the fall in numbers is due to the difficulty of finding useful practical work for the " specials " to do apart from lectures and first aid instruction. They do serve, however, as a most useful reserve at peak periods and on the occasions of Royal visits and other special events.

In writing of public relations the chief constable emphasizes the importance of fostering the spirit of good-will and co-operation between the public and the police. He ensures that all recruits are reminded that in all their dealings with the public it is important to show a sympathetic interest in their problems and to act with forbearance, tact, kindliness and a desire to help.

Vehicle parking causes the police considerable anxiety, and the chief constable thinks that it may sometime become necessary to restrict parking so as to compel businessmen and shoppers to leave their cars outside the town centre and to complete their journeys on foot or by public conveyance. Only thus, he writes, can " the roads be freed for the passage and re-passage of pedestrians."

Recorded crimes increased by 693 over the 1956 figure to a total of 2,599. Breaking offences increased from 357 to 546. In many cases it is possible that felonious entry into business premises could have been prevented if adequate security measures had been taken by the occupiers, and it is stated that the police crime prevention staff are always willing to advise on such matters.

Four hundred and eleven juveniles were responsible for indictable offences and 154 for lesser offences. Of the former 274 were prosecuted and 137 cautioned. The juvenile liaison scheme has dealt, since September, 1955, with 300 juvenile " offenders " and only 30 of these are known to have offended again. In writing of the attendance centre the chief constable thinks that the maximum of 12 hours is sometimes too little, and he notes that this treatment seems to be particularly effective with the 16 year olds.

SHEFFIELD JUVENILE COURT

Although there was for many years a considerable demand for the establishment of some such institutions as detention centres, they have not received unqualified approval everywhere. In particular some magistrates regret that they can no longer send a young person to a remand home under s. 54 of the Children and Young Persons Act, 1933. This point is taken by Miss R. Cole, chairman of the Sheffield juvenile court panel in the report for 1957. She expresses the hope that as the result of approaches to the Home Secretary it may become possible for magistrates to exercise a discretion in this matter.

The report shows what is described as a regrettable increase in juvenile crime, 524 cases in 1957 against 433 in 1956. Indictable offences increased by 73. None-the-less 1957 figures are below those of 1955 in most categories.

In many cases there is a three weeks remand for inquiries after a finding of guilt, and the report of the master or matron of the remand home proves an additional help to the court.

Free use has been made of the attendance centre, to which 84 boys were sent during the year, and there is an interesting account of its methods and activities which indicates that it is being run on sound lines. Girls of teenage who, whatever the offence, are really in need of care and protection, are constituting a great problem, though few in number.

CHILDREN IN THE CARE OF LOCAL AUTHORITIES

The latest White Paper (Cmd. 411) published in March last gives information about the number of children in care under the Children Act, 1948, at March 31, 1957. It took six months longer to publish than the corresponding document for 1956 and as well as this undesirable lateness gives the unwelcome news that the substantial fall (2,213) in the number of children in care during the 16 months from November 30, 1954 to March 31, 1956, has not been maintained. The total number of children in care on March 31 last was 62,033, only 314 less than a year previously. Children boarded out totalled 27,258, being 160 more than at March 31, 1956: the percentage boarded out was approximately the same.

As in past years the great majority of children came into care because of the infirmity of parents or guardians.

Total expenditure on the service was estimated at £15¾ million for 1957–58. This total compares with a figure of £12 million for 1951–52 when almost the same number of children were in care as estimated for 1957–58, but in the earlier year only 24,500 children were boarded out whereas in 1957–58 the number was 31,500. Apart from the advantage to the child of boarding out in a good home there is a saving to the ratepayer as this comparison shows:

	Cost per Child Week		*Percentage Increase*
	1951–52	1957–58	
	£ s. d.	£ s. d.	
Boarding out	1 7 9	1 15 2	28
Maintenance in local authority homes...	4 18 8	7 1 4	43
Difference	3 10 11	5 6 2	

Good work continues to be done by children's officers as the total boarded out evidences. There are a number of factors responsible for the present failure to increase the percentage of children thus cared for: some of these may be temporary and it is by no means certain that the limit of successful boarding out has been reached.

LONDON SESSIONS PROBATIONERS' FUND

In his 1957 report on the county of London sessions probationers' fund Mr. A. W. Cockburn, Q.C., the chairman, emphasizes the value of inquiries before sentence, and states that out of 766 judgments respited after inquiry it was found possible to make probation orders in 464 cases. But, he goes on, unless the probation officers were able to help probationers financially when placed on probation, much of their counsel and understanding would come to naught.

Probation is freely used among adults and not only among adolescents. Out of a cross-section of 210 orders made in 1957, 122 were in respect of persons over 21 years of age. In many instances where an order is made in respect of a married man with family it is found that there is a burden of debt and if rehabilitation is to be attempted financial help must be given.

The fund is administered voluntarily. In spite of generous help from the London justices, the metropolitan magistrates' courts, the London county council (Sunday Cinematograph Entertainments) and the Clothworkers' Company and others, expenditure for the year was slightly in excess of income, and gifts of money or clothing are gratefully received.

COUNTY BOROUGH OF BRIGHTON: CHIEF CONSTABLE'S REPORT FOR 1957

The force was at full strength on December 31, 1957, plus a detective superintendent extra to establishment appointed in special circumstances and due to be absorbed into establishment on the retirement of the officer then holding the position.

The chief constable who makes the report states that his impression, in his short stay in the borough, is that there can be few schemes in Brighton which deserve higher priority than the provision of new headquarters for the police which has been considered for many years.

A second police dog returned to the force, with his handler, in April after training at the Metropolitan Police Dog Training establishment. The two animals attended 45 incidents during the year and eight arrests were made by one dog.

Six hundred and thirty-eight persons were prosecuted for indictable offences during 1957, 60 more than in 1956. One hundred and twenty-four other persons were cautioned. The totals of recorded crimes for the two years were 1,924 and 1,674 respectively. Juveniles were responsible for 218 indictable offences, against 177 in 1956. There were 3,709 non-indictable offences brought before the courts, 1,219 more than in 1956. By far the biggest increase was one of 587 by drivers of private cars, including 42 more convictions for dangerous or careless driving.

Accidents caused death or personal injury to 654 persons, 23 more than in 1956. Of the 654, 232 were pedestrians and 118 were pedal cyclists. Motor cyclists came next with 97 victims. The report states that the large number of pedestrian casualties had as its main reason carelessness when crossing roads or stepping off the pavement; the chief constable urges walkers to take special care when emerging from behind stationary vehicles and to remember to do their kerb drill.

No fewer than 6,100 articles were found in the streets, and 2,016 of these were restored to their owners. The articles found were of infinite variety and included dentures, suitcases, rings and bicycles. Purses, spectacles, keys and umbrellas seem to have been the articles most commonly " mislaid."

REVIEWS

Affiliation Proceedings. By A. J. Chislett, B.Sc., clerk to the justices, county borough of Croydon. London: Butterworth & Co. (Publishers) Ltd. Price 30s. net, postage 1s. 6d. extra.

Mr. Chislett was the editor of the seventh edition of *Lushington's Law of Affiliation and Bastardy*. That edition marks the end of that useful work, which is now superseded by the present book, and it is fitting that the last editor of *Lushington* should be the author of the new book.

The occasion for the change is the coming into operation of the Affiliation Proceedings Act, 1957, a much needed consolidating measure which repeals and replaces a number of statutes and parts of statutes. Mr. Chislett came to the conclusion, and we are sure he is right, that the method of extensive annotations of numerous statutory provisions which used to make up the law of bastardy was neither convenient nor suitable to apply to the new Act; the result would be a rather clumsy book of reference. The publishers agreed and therefore, while full use has been made of much of the contents of *Lushington*, the plan of the book is entirly new. After the historical introduction there are six chapters describing the whole procedure from application to the enforcement of orders, the special provisions relating to soldiers, sailors and airmen and appeals.

These are written in lucid and concise style with all necessary footnotes. Next comes a most useful digest of some leading cases and there follow three appendices, the first dealing with (i) the period of gestation and (ii) affiliation agreements. The second containing the Affiliation Proceedings Act, 1957, in full and parts of a number of other statutes, while the third appendix contains the relevant rules, orders and forms. Finally there is a copious index.

The Maintenance Orders Bill will, if it becomes law, have an important effect on affiliation orders enforcement by making it possible for the court to order attachment of wages. This fact is noted in the preface, but it was not considered desirable to delay publication on that account, as the new Act came into force on April 1.

The book is of a handy size, and the use of heavy type for sub-headings makes it easier to find what one wants. Practitioners and clerks will be glad to have it in court. We are confident that Chislett on *Affiliation Proceedings* will prove a worthy successor to *Lushington*.

Family Law. By E. L. Johnson, M.A., LL.B. (Cantab). London: Sweet and Maxwell, Ltd., 2 and 3 Chancery Lane, W.C.2. Price 35s. net.

Mr. Johnson is a solicitor, and lecturer in law in the University of Durham, so he is in a position to look at his subject from the standpoint of both practitioners and students. Although this book is primarily intended for the use of students he is justified in his hope expressed in the preface, that it may also be useful to practitioners.

The work is divided into four parts headed Preliminaries To Marriage, Legal Effects of Marriage, Termination of Marriage, and Children. There is an interesting historical introduction, which besides being instructive, is sufficient to whet the appetite of the student and to convince the lawyer that here is an author well versed in his subject. From engagement to marry, breach of promise, to marriage itself and its consequences both as between the spouses and as affecting third parties the book goes on to questions of divorce, nullity, judical separation and maintenance. The powers and duties of parents in relation to custody and maintenance and the powers of the courts to deal with children, legitimate and illegitimate are fully explained. The question of desertion and particularly constructive desertion often presents difficulties to magistrates' courts and the same may be said of cruelty. These are dealt with concisely and clearly. The matter of the religious upbringing of a child is equally well expounded. There is abundant citation of decisions, always a helpful feature in a text book but Mr. Johnson's book has the added merit that he is quite prepared to offer a reasoned opinion on some doubtful point, where he is unable to cite any authority, always careful to make it plain to the reader that he is offering an opinion upon a point which remains in some doubt.

Appendices contain a statement of parental or other consents required for marriage of an infant and the table of prohibited degrees of consanguinity and affinity, thus completing a work which covers the whole subject of family law in just over 300 pages.

Aspects of Justice. By Sir Carleton Kemp Allen, M.C., Q.C., D.C.L., Hon. D.C.L. (Glasgow), F.B.A., F.R.S.I., J.P., sometime Professor of Jurisprudence in the University of Oxford. London: Stevens & Sons Ltd. Price 25s. net.

The name of the author is sufficient guarantee that this book is of more than ordinary interest and importance. It consists largely of articles already published and lectures delivered, on the following subjects: Aspects of Justice, Cruelty, The Conscience of Counsel, and The Literature of The Law. The first is a close analysis of justice under five headings, and many a reader who, truth to tell, has had somewhat vague views on national justice, and indeed whether there is such a thing, or on the place of mercy in any system of justice, will find some of his difficulties removed and his mind cleared. Sir Carleton Allen is able to look at the subject from the points of view of a distinguished lawyer, a philosopher versed in the classics and an active magistrate. He is shrewd as well as learned and many of his observations tempt a reviewer to quote copiously. Thus, writing of equal opportunity, which so many people advocate, he declares roundly . . . "opportunity can never be equal among human beings who have unequal capacities to grasp it, many I suspect mean simply that it is unjust that anybody should be more fortunate than themselves . . ."

The subject of cruelty is dealt with under the headings of cruelty to children, cruelty to animals and matrimonial cruelty. The section on matrimonial cruelty, with its detailed examination of decided cases should prove of great value to magistrates and practitioners.

Throughout, the book is written in the author's well-known and lively style so that, as is often said of lighter books, having begun it the reader finds it almost impossible to put it down.

People in Need. By Cyril S. Smith with a foreword by Lord Beveridge. London: George Allen & Unwin. Price 21s. net.

This book is described as a study of contemporary social needs and of their relations to the Welfare State. It is the result of a study undertaken by the author by the Dulwich College Mission following an investigation by him in the London borough of Camberwell. Although the investigation covered rather a limited field it will be valuable to social workers in other areas as the lessons to be learned would no doubt apply in many other parts of the country.

The author admits that when he began his study he was very sceptical about the rôle of voluntary effort in this field. His limited experience had been that voluntary workers were very aware of themselves but their clients were liable to be unaware of their existence. After completing his study he still felt that some social workers, both voluntary and full-time, are immodest about the services they provide for working people, but he is also now convinced that the "educated man's tradition of public service" is a vital part of the life of a modern community.

In considering the concept of need the author shows that there is a useful distinction to be made between general and special needs. The tendency in the development of social services is for the general service to be replaced by the specialized one: the expert replaces the good friend and the educational psychologist replaces the knowledgeable neighbour. The four categories of need considered in the book are those arising from a shortage of money; from the need for care in illness and incapacity; from the need of children for care; and from the need for social life. A distinction is drawn between need caused by a temporary interruption and a permanent decline of earning power. Their effect is analysed in some detail particularly in their relation to retirement pensioners. The author makes interesting comments on the argument for and against the earnings rule for the receipt of retirement pensions.

The survey supported similar surveys elsewhere in showing that the family is still by far the most important agent for mutual help in time of need although its customary rôle in this sphere has altered in the last two generations.

The second part of the book deals with leisure-time services for young people and will be particularly useful to youth workers and others who are concerned to make the youth movement really valuable in building up the young manhood and young womanhood of the country.

PERSONALIA

APPOINTMENTS

Supt. W. Farley, of the Durham constabulary, has been appointed assistant chief constable of Worcestershire, in place of Mr. R. McCartney, who has been appointed chief constable of Herefordshire. Mr. Farley, who is 40 years of age, joined the Durham police in 1938 as a constable, became a detective-constable eight years later and was promoted sergeant in charge of the criminal records office at county headquarters a year afterwards. In 1950 he was promoted inspector for duty in the borough of Darlington. In 1952 he became personal assistant to the chief constable, and in 1956 was promoted chief inspector and seconded to the directing staff of the police college, with the local rank of superintendent.

Mr. H. W. Corson and Mr. M. J. Hensman have been appointed probation officers in the county of Bedford probation service. The former will be stationed at Luton and the latter at Bedford. Mr. Corson took up his duties on August 1, last; Mr. Hensman will take up his duties on September 1. Both men are Home Office trainees, who are shortly completing their training.

RETIREMENTS

Sir Geoffrey Wrangham, now a High Court Judge, has relinquished his position as chairman of North Riding quarter sessions, owing to being unable to attend the sessions regularly through his new commitments. The sessions passed a resolution paying tribute to his outstanding services "always carried out with dignity, ability and efficiency" during the past 12 years. Mr. Stanley-Price, who has been Sir Geoffrey's deputy for some time, was appointed chairman. Sir Geoffrey has indicated his willingness to serve when possible, and he and Mr. A. G. Sharp, who has practised on the North-East Circuit for 23 years, were appointed deputy chairmen.

Mr. Mervyn Phippen Pugh, chief prosecuting solicitor for the city of Birmingham for over a quarter of a century, is to retire in September, next, at the age of 65. He has held the position since 1924. Mr. Pugh had a distinguished Army career with the Royal Berkshire Regiment in the First World War, when he was awarded both the D.S.O. and the M.C. He took up practice as a solicitor in 1920 and worked for four years in the Director of Public Prosecutions' office in London before going to Birmingham. One distinction which he can claim is that he is the only local authority solicitor in the country to conduct cases on behalf of the Director of Public Prosecutions. Elsewhere a member of the Director's office goes from London to the case.

Mr. Frederick Charles Williams, clerk to the Birkenhead magistrates since 1948 and previously deputy clerk for 20 years, is to retire on superannuation at the end of October.

Mr. Leslie W. Heeler, B.A., LL.B., town clerk to Grimsby corporation, has retired. He was appointed in 1938 at the age of 32.

Mr. C. T. Chevallier, M.A. (Oxon), clerk to Battle and Sussex rural district council, retired on July 31, last. He was born in 1893 and educated at the Chigwell and Worcester College, Oxford. He was secretary of the Oxford Union Society, defeating the present Lord Chancellor for the office. He was articled in 1923 to the clerk of Notts. county council, appointed assistant solicitor to East Suffolk county council in 1925 and Devon county council in 1927, where he carried out the legal work of the roads committee. In 1935 he was appointed the first clerk and solicitor of the newly constituted Battle rural district council, which was brought into being by the East Sussex Review Order, 1934. In both wars he served with the Oxfordshire Light Infantry. He is succeeded by Mr. N. J. Heaney, LL.B., who has been acting as assistant solicitor under Mr. Chevallier from April 1, 1958. Mr. Heaney was formerly the town clerk of Lewes.

Mr. F. Freeman-Newton, chief constable of Hereford city and Herefordshire county police forces since 1947, retired at the end of June after 31 years' service. He was chief constable of the city force from 1927 until 1947 when the merger with the county force took place. On the occasion of a presentation to Mr. Freeman-Newton at the Shirehall on June 18, last, Viscount Cilcennin, Lord Lieutenant of Herefordshire, said that it was a sad occasion and "no police force in any county is happier than the Herefordshire force is and was under his rule."

Chief Superintendent Wilfred Henry Webber, deputy chief constable of Reading borough police force, will be retiring at the end of next month. Chief Superintendent Webber was in the Eastbourne borough police force before coming to Reading as superintendent in October, 1948. The following February he was formally appointed deputy chief constable. He served 21 years in Eastbourne force, which he joined as a constable in 1927. He was promoted to sergeant in 1938 and inspector in 1940. Within a short time he was promoted chief inspector.

THE POSTMAN'S KNOCK

There was a time, not so very long ago, when you could post a letter as late as 10.30 or even 11 *p.m.*, and rely upon its reaching its addressee—at any rate in the London area—by the first delivery next morning. In those days the Postmaster-General and his staff took particular pride in the rapidity of the service; on occasion the press announced the safe arrival of a postal packet addressed, if not literally to "M. Jones, London," then in some almost equally inadequate manner. The industry and ingenuity of the officials at every sorting office were more than equal to their task; although their bright record might, once or twice in half a century, be clouded by some mischance which led to the unexplained delivery of a letter or post card dropped in the pillar-box some 15 years or so before, the exception merely proved the general rule of high efficiency all round. Such rare incidents came to be reported in the newspapers rather as triumphs of the "better late than never" school than as examples of bureaucratic blundering.

Today, unfortunately, all that has changed. We should not like to appear dogmatic about it; but if you now delay posting your letter beyond the hour of 6.30 *p.m.*, you will be lucky if it arrives by noon the next day. Few districts have any collection after 7.45 *p.m.*, (4 o'clock on Sundays); and anything dropped into the box at 9 or 10 in the evening may well be delayed for 36 hours. At Christmastide, it is true, the Postmaster-General, his staff and their auxiliaries, perform prodigious feats in transporting astronomical numbers of greetings-cards; as John Milton wrote (though in an entirely different connexion):

> "Thousands at his bidding speed,
> And post o'er lands and oceans without rest;
> They also serve who only stand and wait."

But during the remainder of the year, it must be admitted, we sometimes get the feeling that standing and waiting is the order of the day, for both business and private communications are liable to arbitrary and capricious hold-ups.

What are the reasons for these deteriorations in the service? Others besides crusted Tories may consider that there is some connexion with the ever-increasing powers of the trades unions, and the tendency of some union officials in their zeal to advance the interests of their members, to ignore the welfare of the community as a whole. But that is not the entire story.

Families are no longer such self-contained units as they were. Buildings that once housed a father, mother, five or six children and a staff of maids, have now been converted

into a number of self-contained dwellings—suites or bed-sitting rooms—each with an independent couple or a single individual in occupation. Great houses, standing in their own grounds, have been demolished, and blocks of flats erected in their place—each block with as many inhabitants as a small-sized town. All this makes considerably more work for the postman's eyes, hands and feet.

His double-knock, so to speak, has had its repercussions in the House of Commons. The lady member for Plymouth has thoughtfully asked the Postmaster-General if he will consult with local authorities, and others, to see if it is possible to have several post-boxes on the ground-floors of such buildings, to serve each individual flat, in order to save the postman the trouble of climbing up and down many flights of steps. Receiving an affirmative reply, the honourable lady led the Minister farther up (or rather down) the garden path. Would the P.M.G. consult the builders of houses with front gardens on the possibility of installing a post-box at the gate or entrance to the path leading to the front door? "Postmen often had to take as many as 16 steps to the front door and 16 steps back to deliver one letter." The description of this *danse macabre* produced sympathetic murmurs in many parts of the House, and elicited the reply that the Post Office was looking seriously into the matter, in the light of the "time and motion studies" made, to ascertain possible savings, in New Zealand and the United States. Only the member for South Worcestershire mentioned the appropriate corollary—that, since the ordinary house-resident would be the person to suffer for these reforms, the Postmaster-General should endeavour to reduce the cost of postage. This sensible proposal was coldly received.

Great is the power of suggestion. On the very day of this discussion in the House an 18 year old postman was prosecuted and fined, at Sutton Coldfield, on two charges (*inter alia*) of "secreting postal packets." He had asked for 91 other cases to be taken into consideration.

The circumstances of this curious case were rather pathetic. It was, said defending counsel, a bitterly cold day, and it was raining. The youthful defendant had had to get up very early, and he was miserable and depressed. He was, normally, very happy driving the G.P.O. van on collection and delivery; but on this occasion he had to walk; and "the weather overcame him." After making some deliveries, he pushed the remainder of the letters down a rabbit-hole, where they were subsequently found.

When we read this item of news, we saw the point at once. The defendant's extreme youth, which was pleaded in mitigation, no doubt accounts for the continued presence, in his subconscious, of a famous literary episode—the opening of *Alice's Adventures in Wonderland*. Chapter I, it will be remembered, describes how the heroine runs across a field in pursuit of a White Rabbit (after she has seen him take a watch out of his waistcoat-pocket), and how she pops down the rabbit-hole after him. Her intermediate adventures are not (as the conveyancers say) "material to be herein recited"; but in Chapter IV Alice meets the White Rabbit at last, and is ordered by him to run to his home and fetch him a pair of gloves and a fan:

> "'He took me for his housemaid,' she said to herself as she ran. 'How surprised he'll be when he finds out who I am! But I'd rather take him his fan and gloves—that is, if I could find them.' As she said this, she came upon a neat little house, on the door of which was a bright brass plate, with the name W. RABBIT engraved upon it. She went in without knocking, and hurried upstairs."

Here, then, is the obvious case of a delusion, recollection, dream-fantasy or *trauma* of the subconscious (call it what you will), which cries aloud for psychiatric diagnosis and treatment. The defendant was clearly acting under the influence of a delusion that the letters in question were addressed to "W. RABBIT, ESQ.," and he was doing his best to deliver them. The matter therefore seems to fall within the fourth part of the M'Naghten Rules, which is summed up by the learned editors of Kenny's *Outlines of Criminal Law* in the words:

> "Where a criminal act is committed by a man under some *insane delusion* as to the surrounding facts which conceals from him the true nature of the act he is doing, he will be under the same degree of responsibility as if the facts had been as he imagined them to be."

While we deprecate the use of the italicized words in relation to any episode in the works of Lewis Carroll, that supreme master of imaginative fantasy, we should like to argue an appeal against this conviction on the grounds suggested by Kenny's note. A.L.P.

BOOKS AND PAPERS RECEIVED

(The inclusion in this feature of any book or paper received does not preclude its possible subsequent review or notice elsewhere in this journal.)

Rent Act in Practice. N. D. Banks. Solicitors' Law Stationery Society, Ltd. Price 15*s*. net.

Annual Report (1957–58) of Metropolitan (Organization and Methods) Committee. Westminster City Hall, Charing Cross Road, W.C.2.

The Problem Family. W. E. Cavenagh, T. A. Ratcliffe, T. G. Rankin and A. F. Philp. I.S.T.D. Publications. Price 3*s*. net.

British Journal of Delinquency. July, 1958. Bailliere, Tindall & Co. Ltd.

Oyez Tables Nos. 2, 3 and 6, being Legal Costs on the Grant of a Lease; *Ad Valorem* Stamp Duties; and Legal Costs on a Sale of Land. Price 3*s*., 2*s*. and 2*s*. 6*d*. respectively. Solicitors' Law Stationery Society, Ltd.

International and Comparative Law Quarterly. Vol. 7. Part 3. Society of Comparative Legislation. Price 15*s*.

The Law of the Sea. Society of Comparative Legislation. Price 5*s*.

Report of the Departmental Committee on Proceedings before Examining Justices. Cmd. 479. H.M.S.O. Price 1*s*. 9*d*. Rhys Hopkin Morris. Gomerian Press, Llandyssul. Price 2*s*. 6*d*.

Wurtzburg's Building Society Law. Eleventh edition. John Mills. Stevens & Sons Ltd. Price £2 10*s*.

NOTICE

The National Association of Probation Officers (Berks, Bucks and Oxon Branch) are holding a week-end conference at St. Edmund Hall and All Souls' College, Oxford, from Friday, September 26, to Sunday, September 28, 1958. Mr. K. E. Minns, 2 Checker Walk, Abingdon, is conference secretary.

CORRECTION

"An Offence Has been Committed."

This article at p. 497, *ante*, contains (19 lines up from the bottom of the first column) a printing error which alters the entire sense of the sentence. The line itself should have been omitted completely, and in its place should be inserted "*Stone* already mentioned, it might be argued that a point of" so that the sentence should read "On the basis of the footnote in *Stone*, already mentioned, it might be argued that a point of conviction cannot be reached until the criminal intention is taken as being present."

NOW TURN TO PAGE 1

In any sentence of imprisonment the word "month" shall, unless the contrary is expressed, be construed as meaning calendar month. (Prison Act, 1952, s. 24 (1).)

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption Act, 1950—*Consent where paternity is denied.*

Mr. and Mrs. YZ intend to apply for an order authorizing them to adopt X (born August 30, 1957). The child is stated on the birth certificate to be the child of TS and JS his wife. TS and JS signed forms of consent in their capacity as father and mother respectively. Notices of the hearing have been served and JS, the mother still consents as mother. TS, the father has now stated that he disputes paternity and cannot therefore consent as father. He is willing to consent as "husband of the mother."

Can the court accept this latter consent or must they insist on a consent as father of the infant or alternatively dispense with his consent on one of the grounds laid down.

I have referred to notes of evidence taken when Mrs. S applied for an order against her husband under the Married Women Acts. On March 6, 1957, she stated that there was no child of the marriage but "one on the way." She further stated that her husband left her about the middle of January. Her application on the ground of desertion was dismissed. UNECIM.

Answer.

If the court is satisfied upon the evidence before it, that the man is not the father of the infant, his consent is not required in the capacity of parent.

If the evidence satisfies the court that he is the father then in our opinion his consent can be acted upon even if he denies paternity.

2.—Criminal Law—*Betting Act,* 1853—*Form of charge—Time at which objection should be taken before magistrates' court.*

Certain persons have been charged with using premises (a public house) for the purpose of betting. Summonses were issued returnable before the magistrates, and the charge (so far as the main offenders are concerned) was that they used the premises for the purposes of betting with persons resorting thereto upon certain contingencies, namely, horse racing, etc., contrary to ss. 1 and 3 of the Betting Act, 1853.

When the case came before the magistrates, the defence immediately stated that they wished to put forward certain legal arguments relating to the form, etc., of the charges. At this stage the defendants had not been charged, nor had they been given their right of election to go for trial by jury. The prosecution submitted that at this stage it had not been determined whether the justices sat as a court of summary jurisdiction or as examining justices, and that until the defence exercised or failed to exercise their right of election this point could not be determined, and that it must be determined in what capacity the justices were acting before any arguments could be put forward. The justices did not in fact decide this point at all, but allowed the defence to put forward their arguments.

The defence put forward the argument that the summons was bad for duplicity because it referred to the charge as being contrary to ss. 1 and 3 of the Betting Act. They submitted (supported by some of the words of Lord Atkin in the House of Lords in *Milne* v. *The Commissioner of Police*) that two distinct offences were created, one being the offence of common nuisance (indictable) under s. 1 and one summary offence created by s. 3. They went further and criticized the wording of the charge as having mixed up in it some of the language of s. 1 and some of s. 3. They insisted that the prosecution should elect upon which of these charges they were proceeding.

For the prosecution, it was argued that whilst s. 3 did obviously create the summary offence, which it was sought to charge, no details of the offence could possibly be set out by following the wording of s. 3 only. That section made it an offence to use, keep, etc., premises for any of the purposes before mentioned. The purposes before mentioned are the purposes set out in s. 1 and unless one incorporates some of the wording of s. 1 it would be impossible to set out the precise nature of the offence complained of. Mere reference to s. 1 would not be sufficient, as s. 1 itself consists of two separate kinds of offences, namely, using for purposes of betting and using for purposes of receiving deposits, etc.

At this stage the justices decided to adjourn the matter in order that they might consider the position.

Your opinion of the following points would be appreciated.

1. Should the justices, before the right of election is given to the defence, and dependant upon their action thereon, the exact status of the justices as a court of summary jurisdiction or examining justices determined, hear arguments into the nature and form, etc., of the charges?

2. Is there any objection to the inclusion of the reference at the end of the charge to the offence as being "contrary to ss. 1 and 3 of the Betting Act"? (It is in no doubt that the wording of the charge is correct, in describing in the words of s. 1 the precise nature of the acts complained of.)

3. In the event of the justices deciding the wording of the charge, so far as the inclusion of the references to "ss. 1 and 3" is concerned is bad, is it then in order to apply for an amendment by striking out the words "1 and" and leaving the charge referred to as "contrary to s. 3." The wording of the details of the charge would, of course, remain unaltered.

4. Your opinion of the position generally, particularly having regard to the possible view being taken that the justices must *first* decide their exact status as mentioned in 1. MAWN.

Answer.

1. and 4. The offence is a summary one unless and until the defendant claims trial by jury, and we think that any argument about the form of the charge should be heard before the charge is put to the defendant to give him his right to claim trial by jury. *R.* v. *Phillips* [1953] 1 All E.R. 968, decided that a defendant should not be indicted at quarter sessions, in a case to which s. 25 of the Magistrates' Courts Act, 1952, applies, on a charge different from that on which he claimed trial by jury. If, after his claim, any alteration in the form of the charge were made it might well be necessary to put the charge to him in its amended form and to take his election on that charge.

2. We agree that to specify the charge clearly it is necessary to import words from s. 1 but it appears that the opinion of Lord Atkin in *Milne* v. *Commissioner of Police* [1939] 3 All E.R. 399 at pp. 409 to 411 was that the offence should be charged as being contrary only to s. 3 of the Act, and we think that a magistrates' court must act upon that opinion.

3. The addition of the words "1 and" affects only the form of the charge within the meaning of s. 100 of the Magistrates' Courts Act, 1952, and the court can and should allow them to be deleted if the prosecution so applies.

3.—Husband and Wife—*Maintenance Agreements Act,* 1957—*Maximum rate when agreement varied by magistrates' court.*

I should be very grateful if you could tell me whether or not you agree with my opinion that s. 1 (4) (*b*) excludes the possibility of a magistrates' court varying any maintenance agreement within the Act which provides for the maintenance of either party at a rate exceeding £5 per week or of any child of the marriage at a rate exceeding 30*s.* per week. HATEN.

Answer.

We agree with our correspondent's opinion. The matter was dealt with in an article at 121 J.P.N. 576.

4.—Land—*Settled Land—Vesting assent not containing particulars required by Settled Land Act,* 1925—*Ascertainment of trustee of settlement.*

Under the will of A land was settled on B for life and after her death in succession on other members of her family. A appointed B, C and D (when the latter became of age) to be executors of her will. The will was proved in 1941 by B, C having pre-deceased A, and D not being of age, power being reserved for D to prove. B then executed an assent dated April 11, 1941, vesting the land in herself upon the trusts declared by the will of A, which assent contained no reference to the particulars required by para. (*c*) (*d*) and (*e*) of s. 5 (1) of the Settled Land Act, 1925. D did not prove the will of A and there is no document appointing trustees of the settlement. There were no dealings with the property between the assent referred to above and 1955 when B died, and in 1957 probate of her will limited to the settled land was granted to D as "the sole surviving trustee of settled land vested in B under the will of A."

(*a*) What is the effect of the assent dated April, 1941? Was it valid to vest the legal estate in B as tenant for life or invalid by reason of not being in the form required by s. 5 of the Settled

Land Act, 1925? If the latter, did the property continue to vest in B in her capacity of personal representative of A?

(*b*) D presumably obtained probate of the will of B limited to the settled land because he was the sole surviving executor appointed by the will of A and thus became a trustee, irrespective of whether he proved the will or was formally declared a trustee under a vesting assent, by reason of s. 30 (3) of the Settled Land Act, 1925. Can purchasers of the property safely take a conveyance from D who sells as sole personal representative, having regard to s. 37 (1) of the Administration of Estates Act, 1925? BETT.

Answer.

(*a*) In our opinion, the assent was inoperative, but the land remained vested in B as personal representative, and trustee for purposes of the settlement.

(*b*) Yes, in our opinion.

5.—Landlord and Tenant—*Assignment of lease—Arrears of rent outstanding—Right to distrain against present tenant.*

My council aquired the freehold reversion to certain property in 1954, subject to a lease expiring in 1998. The lease contained the usual covenant to pay the rent. In October, 1957, the leasehold interest was vested in H, who was not the original lessee. On October 31, 1957, H assigned his interest to X, Ltd. At that date a substantial amount of rent was owing to the council in respect of the period March, 1956, to October, 1957. X, Ltd. have paid the rent accruing due from the date of the assignment to them but refuse to pay the arrears. The council's solicitors are of opinion that an action against them for breach of covenant would not succeed. My council are anxious to distrain on the land to recover these arrears but some doubt is felt as to their right to do so. On general principles this should be possible. The Law of Distress Amendment Act, 1908, which expressly protects lodgers and under tenants, does not extend to assignees taking the whole of the leasehold interest. The assignee takes the whole of the benefit of the tenancy and it would appear right that he should hold it subject to the burdens of the same. B.D.T.C.

Answer.

We agree. Subject to exceptions, a stranger to the lease is liable to have his goods distrained, while on the premises, subject to a right against the lessee to be reimbursed. The assignee is *a fortiori*; he could have obtained an indemnity from his assignor.

6.—Magistrates—*Jurisdiction and powers—Summary trial of indecent assault on female committed more than six months before information laid.*

We prosecute an adult male upon charges of indecent assault upon a female child and upon a female young person respectively under s. 14 of the Sexual Offences Act, 1956. These appear to be offences within sch. 1 to the Children and Young Persons Act, 1933, and s. 14 (3) of that Act. Each offence is alleged to have been committed more than six months from the date of the information. Please advise whether the magistrates have any power to try the offences summarily. Footnote (*b*) on p. 112 of the 1958 *Stone* seems to suggest there is no such power. J. AJAY.

Answer.

There is no power to try these offences summarily.

We think that our correspondent means to refer to footnote (*a*) not (*b*) on p. 112 of the 1958 *Stone*.

7.—Magistrates—*Practice and procedure—Order under s. 34 of the Magistrates' Courts Act, 1952, after conviction for larceny; amount awarded takes into account offences "taken into consideration"—Remedying the mistake.*

Recently X and Y (a husband and wife) appeared before the magistrates' court on two joint charges of larceny and were convicted and fined, each asking for two further offences to be taken into consideration. The substance of the charge was that the accused had sold furniture which they held under hire-purchase agreements and the offences taken into consideration were of a similar nature and were a result of transactions with the same hirers.

The justices made orders for compensation in both cases and owing to an oversight at the time, the order against X was in excess of the balance due from him in respect of the offence of which he had been convicted in that it took into account some of the goods forming the subject matter of the offences taken into consideration.

This fact was not noticed until a few days after the hearing by which time the court was *functus officio* so that the original order could not be varied. Payment was ordered to be by instalments over a considerable period.

The time for appeal is past and the justices are anxious to know how they can put matters right. There appears to be no power of remission other than in the Crown although the order for compensation when originally made was clearly *ultra vires*.

I shall be glad of any advice that you can offer. J. SNODGRASS.

Answer.

We think that this order is part of the "sentence" as defined in s. 83 (3) of the Act of 1952, and that there is a right of appeal to quarter sessions. It may well be that quarter sessions, if the matter were explained to them, would give X leave, under s. 84 (3), to appeal out of time. If that is possible we think it is the best solution of the difficulty.

If this cannot be done we suggest that the court should notify the person in whose favour the order was made, and X, that the amount which the court had power to order was limited to £z, being the amount of the loss suffered by the former by reason of the offence of which X was convicted. It may be that if this is done X will be prepared to pay, and the loser to accept, that lesser amount. We do not think that the court can take any steps to enforce its order unless it is duly amended on appeal.

8.—Magistrates—*Practice and procedure—Submission of no case—Right of reply by advocate for prosecution.*

I shall be grateful of your opinion as to whether the solicitor for the prosecution has a right to reply after a submission of no case to answer has been made by the solicitor for the defence unless such a submission involves a point of law. It may be argued that every submission of no case to answer by the defence does involve a legal argument, in that such submission implies that the evidence before the court is not sufficient to meet the legal requirements necessary to prove the charge. KIPORA.

Answer.

We answered a similar question at 113 J.P.N. 759 (P.P. 9). If the submission is that, accepting the prosecution's evidence, the facts proved by that evidence do not constitute the offence charged that is a question of law on which, by accepted practice, the prosecution have a right to reply. If the submission is that the prosecution's witnesses are not, for one reason or another, to be believed, that is a question of fact and there is no right of reply.

9.—Mental Deficiency Act, 1913—*Medical evidence required by s. 8.*

A young person has appeared before the local juvenile court and pleaded guilty to certain offences, and the court decided to remand him for three weeks for a report as to his mental and medical condition under s. 26 of the Magistrates' Courts Act, 1952.

It is expected that when the young person appears again before the justices, they may wish to take action under s. 8 of the Mental Deficiency Act, 1913. I take the view that before acting under such section, the justices must hear on oath the evidence of *two* doctors. It has been suggested that only one doctor need attend. Kindly let me have your views, and if you are of the opinion that only one doctor need attend, please let me have the authority for such case. RYMON.

Answer.

We are not aware of any legal requirement that two doctors must be heard on oath. Section 9, *ibid.*, requires the certificate of two duly qualified medical practitioners, but s. 8 refers only to medical evidence, and if the court is satisfied on the evidence of one doctor there appears to be nothing to prevent the case being dealt with under that section.

This matter was considered in *Re Sage* (1958) 122 J.P. 154; [1958] 1 All E.R. 477 in which it was held that the statement by the doctor in evidence coupled with the magistrates' observations of the defendant in court was sufficient evidence to justify the provisions of the order.

Attention is, however, drawn to circular 2/58 dated January 15, 1958, issued by the Ministry of Health to clerks to county councils and town clerks, in which it is suggested that patients should be admitted to mental deficiency hospitals on an informal basis unless there are circumstances in which it is necessary for the hospital to have authority to detain the patient.

10.—Milk and Dairies Regulations, 1949—*Companies Act,* 1948 *—Position of liquidator.*

A limited company has been consistently failing to observe the requirements of the Milk and Dairies Regulations, 1949, reg. 26, para. 1, in failing to ensure that milk bottles are thoroughly clean before use. In 1956 a receiver and manager was appointed under a debenture. The company is in compulsory liquidation under an order of the High Court registered in 1957. The provisional liquidator is the official receiver.

Having regard to s. 231 of the Companies Act, 1948, and to the notes thereunder as printed in *Halsbury's Statutes,* vol. 3, at p. 648, must leave of the High Court be obtained before proceedings can be brought by the council against the company? If so, then against whom should leave be sought to prosecute, the official receiver or the receiver and manager? What would be the probable cost to the council in seeking the necessary leave, and how could this expense be recovered against the company, if it be recoverable?

A further point arises: the offence under reg. 26, mentioned above, is committed by a distributor, and a distributor is defined by the said regulations as a person trading. In view of the legal position of the company, is the company "trading"? If the company is not trading, then what person is so trading, within the meaning of the regulations? ESTUR.

Answer.

The appointment of a receiver and manager under powers contained in a debenture (as distinct from his appointment by the court) does not displace the company's servants. So far, it is the company which must be held responsible for these offences, not the receiver, and the summons should *prima facie* be against the company and be served on the secretary. But the provisional liquidator has power to carry on the company's trade so far as is necessary for the beneficial winding up of the company. We suppose that this has been happenning, and the liquidator should therefore be formally notified that the summons is to be applied for. The service of the summons requires leave from the High Court, as was fully explained by Kay, J., in *Re Briton Medical & General Assurance Association* (1886) 54 L.T. 152. When giving leave the High Court would presumably make an order for the council's costs.

11.—National Assistance—*National Assistance Act,* 1948*—Payment for part III accommodation—Time limit.*

I shall be glad if you will kindly let me have your views on the following hypothetical cases under the National Assistance Act, 1948:

Case 1. A is accommodated in part III accommodation for a short period and fails to pay the local authority for it. By s. 22 (1), A shall pay for the accommodation in accordance with the provisions of that section. Therefore, under s. 56 (1) and (2), the local authority proceed against A summarily for the amount due within three years from the date A ceases to be accommodated, but after the expiration of six months from that date.

Case 2. B, accompanied by three dependent children, is similarly accommodated as in case 1 and fails to pay. The local authority act in the same way against B as in case 1 having regard to s. 22, subs. (7).

Case 3. Mrs. C, of no means, accompanied by three dependent children, is provided with part III accommodation for a short period. Mr. C. has deserted Mrs. C. and his whereabouts are not known. At the end of the period Mrs. C is unable to pay for the accommodation. Two and a half years later, the local authority traces Mr. C. In spite of a request for payment, Mr. C refuses to pay. The local authority then institute summary proceedings against Mr. C having regard to the provisions of ss. 42, 43 and 56 for the amount due to the local authority in respect of the maintenance of Mrs. C and three children.

Is the local authority within its rights in the three cases stated above and, if not, would it be possible please to give reasons? Have the magistrates' court power to exercise its rights under s. 50 (1) of the Magistrates' Courts Act, 1952? F. PARI PASSU.

Answer.

Cases 1 and 2. The local authority can proceed, since s. 56 (2) of the Act provides a special time limit of three years within which proceedings can be brought and s. 104 of the Magistrates' Courts Act, 1952, does not apply.

Case 3. Section 43 of the Act envisages two separate orders by a magistrates' court, (1) an order on complaint that the person liable should pay the money, and (2) civil debt proceedings to enforce that order. The extended time limit in s. 56 (2) applies to the second order only and, unless the local authority laid a complaint within six months of the date when accommodation ceased to be given, it cannot now proceed under s. 43.

12.—Road Traffic Acts—*Insurance—Agreement between two employees, with employer's knowledge, that one was to drive the other's car in connexion with an arrangement to avoid car owner losing a day's work—Effect of s. 29 of the Act of* 1956.

A and B are employed by C as motor vehicle drivers. A is the son of C. A's duties are concerned with coal deliveries. B drives a vehicle owned by C fulfilling a contract with a local council. B is required to attend at the yard of C at 6 *a.m.* in order to drive the vehicle carrying out the council contract. On occasions B has overslept and employee A has driven the vehicle on the council contract, which has meant that no coal deliveries could be made and employee B has lost a day's work.

Recently B has purchased a motor car and has arranged with A that in the event of B being late for work A was to drive the lorry to a site in the council's area and B was to drive to that site in his car and take over the lorry and A was then to drive the car back to the yard of C. Whilst driving the car back to the yard A was stopped and it has been found that the only insurance in respect of the car was taken out by B and is "owner driver only." A is prosecuted for using whilst uninsured. The employer C was informed of the arrangements made by A.

Section 29 of the 1956 Road Traffic Act raises a statutory defence under certain circumstances. I should be obliged by your opinion:

(*a*) What is the legal definition of "contract of loan" and does the lending of the vehicle under the circumstances outlined come within that definition.

(*b*) If not are the words of the section "that he was using the vehicle in the course of his employment" to be construed in the very wide sense as similar words have been applied in the many reported cases under the law of "master and servant."

B is responsible for all payments in respect of the car he has purchased including taxing and insurance and no payments are made by C in respect thereof. The advantage to B is that he is able to do a day's work on the occasions he is late arriving at the yard, whereas in the past he has lost a day's work.

J. PERPLEXED.

Answer.

(*a*) A "contract of loan" is some legally binding arrangement enforceable by either party. This is an informal arrangement and is not a contract.

(*b*) We think that, for the use to be in the course of his employment, it would have to be something done by A as part of his work for C. The use of this car by A was a private arrangement between A and B which, although known to C, was for the convenience of B and was not something which A was required to do to carry out his duty to his employer C.